

# 80 258-1 195 **PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Trinity Assembly of God, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 13.1b to permit two double-face non-illuminated signs for a church in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet SAR 3/1/80

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. Large size of site (15.07 acres) requires two signs.
2. Exact location of site confusing from Beltway.
3. Large size sign commensurate to large building for aesthetic value.
4. Location of sign away from road for sight purposes.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Contract purchaser Earl D. Baldwin  
Legal Owner  
Address 2122 West Joppa Road  
Lutherville, MD 21093  
Petitioner's Attorney 821-673  
276-2757 Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 8th day

of May 1980 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 17th day of June 1980 at 1:30 o'clock P.M.

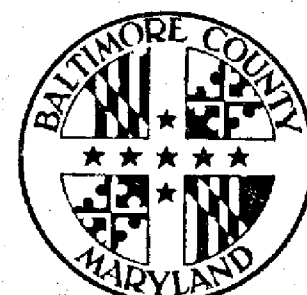
[Signature]  
Zoning Commissioner of Baltimore County.

(over)

## **BALTIMORE COUNTY**

### **ZONING PLANS**

### **ADVISORY COMMITTEE**



### **PETITION AND SITE PLAN**

### **EVALUATION COMMENTS**

## **BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE**

June 6, 1980

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

Chairman  
Nicholas B. Commodari  
Chairman

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Reverend Earl D. Baldwin  
2122 West Joppa Road  
Lutherville, Maryland 21093

RE: Item No. 195  
Petitioner - Trinity Assembly of God  
Variance Petition

Dear Reverend Baldwin:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Because of your proposal to construct an additional sign on this site along Joppa Road and thereby have two signs with a total area of 60 square feet, this Variance is required.

Enclosed are all comments submitted to this office from the committee members at this time. The remaining members felt that no comment was warranted. This petition was accepted for filing on the date of the enclosed certificate and a hearing scheduled accordingly.

Very truly yours,

[Signature]  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:hk

Enclosures



BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.  
DIRECTOR

April 25, 1980

Mr. William E. Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #195 (1979-1980)  
Property Owner: Trinity Assembly of God  
W/E corner Joppa Rd. and I-695  
Existing Zoning: DR 1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07 District: 8th

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved and are secured by Public Works Agreement #87805, executed in conjunction with Project #7233, "Trinity Assembly of God Church".

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 195 (1979-1980).

Very truly yours,

[Signature]  
ELLSWORTH M. DYER, P.E.  
Chief, Bureau of Engineering

END:EAM:FWR:ss

cc: R. Covahey

S-SS Key Sheet  
43 & 44 NE 8 & 9 Pos. Sheets  
NE 11 B and C Topo  
60 and 69 Tax Maps



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
474-3211

JOHN D. SEYFFERT  
DIRECTOR

May 9, 1980

Mr. William Hammond, Zoning Commissioner  
Zoning Advisory Committee  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #195, Zoning Advisory Committee Meeting, April 8, 1980, are as follows:

Property Owner: Trinity Assembly of God  
Location: NE/C Joppa Road and I-795  
Existing Zoning: D.R.1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07  
District: 8th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This plan has been reviewed and there are no site-planning factors requiring comment.

Very truly yours,

[Signature]  
John L. Wimbley  
Planner III  
Current Planning and Development



baltimore county  
department of traffic engineering  
TOWSON, MARYLAND 21204  
(301) 494-3550

STEPHEN E. COLLINS  
DIRECTOR

May 6, 1980

Mr. William Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments on items No. 188, 191, 194, 195 and 196 with regard to the Zoning Advisory Committee Meeting of April 8, 1980.

Very truly yours,

[Signature]  
Michael S. Flanagan  
Engineer Associate II

MSF/bza



BALTIMORE COUNTY  
DEPARTMENT OF HEALTH  
TOWSON, MARYLAND 21204

DONALD J. ROOP, M.D., M.P.H.  
DEPUTY STATE & COUNTY HEALTH OFFICER

May 9, 1980

Mr. William R. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #195, Zoning Advisory Committee Meeting of April 8, 1980, are as follows:

Property Owner: Trinity Assembly of God  
Location: NE/C Joppa Rd. & I-695  
Existing Zoning: D.B. 1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07  
District: 8th

The proposed signs should not present any health hazards.

Very truly yours,

[Signature]  
Ian J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

IJP/lth



BALTIMORE COUNTY  
FIRE DEPARTMENT  
TOWSON, MARYLAND 21204  
825-7310

PAUL H. REINCKE  
CHIEF

May 13, 1980

Mr. William Hammond  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Nick Commodari, Chairman  
Zoning Plans Advisory Committee

Re: Property Owner: Trinity Assembly of God

Location: NE/C Joppa Road & I-695

Item No: 195 Zoning Agenda: Meeting of April 8, 1980

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.

( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved as drawn.

(X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER [Signature] Noted and Approved: [Signature]  
Planning Group Fire Prevention Bureau  
Special Inspection Division




2.

*June Holmen*  
June Holmen  
County Board of Appeals of Baltimore County

CERTIFIED COPIES OF PROCEEDINGS BEFORE  
THE ZONING COMMISSIONER AND THE  
BOARD OF APPEALS OF BALTIMORE COUNTY

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER  
OF BALTIMORE COUNTY

June Holmen  
County Board of Appeals of Baltimore County

  
John W. Hessian, III

John W. Hession, III

-2-

Peter Max Zimmerman

RECEIVED  
BALTIMORE COUNTY  
OCT 26 10 30 AM '66  
CLERK OF COURT  
APPEALS  
BY: E

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201



PEOPLE'S COUNSEL FOR BALTIMORE COUNTY  
Petitioner  
v.  
TRINITY ASSEMBLY OF GOD,  
Respondent

IN THE COURT OF APPEALS  
OF MARYLAND  
September Term, 1983  
Petition No. 80-258-A

PETITION FOR WRIT OF CERTIORARI TO  
THE COURT OF SPECIAL APPEALS OF MARYLAND

People's Counsel for Baltimore County, Petitioner, pursuant to Maryland Rules 813-11, requests this Court to issue a writ of certiorari to the Court of Special Appeals, as follows:

(a) The instant case was docketed in the Circuit Court for Baltimore County as Trinity Assembly of God v. Baltimore County Board of Appeals, Miscellaneous No. 7662.

(b) The case was decided by the Court of Special Appeals, and its per curiam opinion in No. 1250, September Term, 1982, filed May 2, 1983, is appended hereto as Exhibit A.

(c) The judgment of the Circuit Court for Baltimore County was dated August 16, 1982. That Court's Opinion is appended as Exhibit B. The Mandate of the Court of Special Appeals affirmed the lower Court judgment and reversed that of the administrative agency. The County Board of Appeals' Opinion is appended as Exhibit C.

(d) The questions presented for review are:

1. Whether it is a reasonable exercise of the police power for a local zoning board to deny a sign variance requested for the benefit of interstate visitors which would proliferate signs along the Baltimore Beltway in a residential area?

*Rec'd 6-14-83  
11:30 am  
6-14-83  
JLL*

- 3 -

(hereinafter "BCZR") 501.6; Baltimore County Charter Sec. 603; see Dahl v. County Board of Appeals, 258 Md. 157 (1970). The hearing was brief; the testimony occupied six pages of an eleven-page transcript.

The Pastor, the only witness, claimed that because of the Joppa Road overpass, beltway drivers would tend not to see the church and miss the proper beltway exit. He neither described the character of the neighborhood, nor made any suggestion that the church was hard to locate from Joppa or other local roads. There was no evidence as to traffic safety or aesthetics.

The People's Counsel opposed the variance because there appeared no hardship or practical difficulty for the church to give its congregants proper directions, and because it would set a precedent for the proliferation of free-standing signs along the beltway.

The Board proceeded on its own to visit the site. It then issued its opinion denying the variance because the large, imposing structure required no further directional message, and the small sign could create a traffic hazard.

The Circuit Court reversed, concentrating on the point that the only witness was the Pastor. The Court of Special Appeals majority picked up on this and said (page 5):

"Although appellee agrees with the scope of review and the standard to be applied, it points out that zoning decisions, nevertheless, must be based on evidence. Mayor and City Council of Rockville v. Cotler, 230 Md. 333 (1963) of which there was none in this case other than that provided by Trinity. The only response in the record to Trinity's evidence is argument by Counsel, and it is to this fact that the Circuit Court in its truncated opinion and order referred."

The majority also agreed with Trinity that the Board's visit to the site was improper, and that evidence should not have been considered. Then, purporting to apply all of the

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similarly approved the use of the police power for "...the elimination of signs or pennants which distracted motorists..." and "to preserve an area which is generally regarded by the public to be pleasing to the eye..." City of Baltimore v. Mano Swartz, 268 Md. 79, 87, 90 (1973), citing, *inter alia*, Grant v. City of Baltimore, 212 Md. 301, 316-19 (1957) (restriction of billboards in residential areas). Here, the Board acted both to prevent a perceptible hazard and stem what may be a tide of signs threatening to multiply along the beltway in pleasing residential areas.

Moreover, it rejected the incredible claim that a church suffers from hardship or practical difficulty because it is not readily visible from an interstate highway. In this context, it understood implicitly that the requested variance to benefit Washingtonians and the like is for the "personal convenience" of the church and not associated with the property. Camey v. City of Baltimore, 201 Md. 130 (1952).

While there are a number of Court of Appeals opinions reviewing the broad limits of the local power to regulate signs, there is a lack of guidance on the handling of sign variances in concrete fact situations. It would be in the public interest for the Court to take this case as an opportunity to fill that void.

II. Burden of Proof; Burden of Persuasion

The Court of Special Appeals divided over the analysis of the burden of persuasion in an adjudicatory hearing. We share Judge Moylan's view that the majority took away from the Board its function to judge the persuasiveness of the evidence in light of the applicable legal principles.

It is apparent that the People's Counsel was penalized for its failure to produce its own testimony. This was inappropriate and unfair, because the thrust of the opposition

- 7 -

Here, the Board's unannounced site visit is well within the bounds of fairness. One of the purposes of the administrative law system is to utilize expertise, and this was a neutral act involving merely the observation of real estate. Neither party necessarily stood to gain or lose. The aim apparently was to better inform the Board in a practical way, without a full-scale trial at the viewing.

Research has disclosed no case law in point. See Davis, *op. cit.*, Chapter 16. It would, therefore, be appropriate for the Court of Appeals to clarify an important question arising in the conduct of zoning cases.

It would also be appropriate to clarify whether the admission of such evidence, even if erroneous, can be reversible error. Davis suggests that the nature of administrative law is such that it cannot, under federal law. Davis, *op. cit.*, Sec. 16.12; Public Utilities Commission v. Pollak, 343 U.S. 451 (1952). We know of no Maryland authority.

IV. The Remand Issue

In O'Donnell v. Basler, 289 Md. 501, 509 (1981), it was held that the reviewing court should ordinarily remand when it finds an error of law committed by the administrative agency. There, the question was the ability of the court to delete conditions erroneously attached to a zoning special exception. Here, the question is the ability of the court to decide the case after excluding the evidence produced by the site visit.

We suggest that the appropriate remedy for the evidentiary problem (assuming error) would be to remand to provide an opportunity for an announced site visit. All parties would then have an opportunity fairly to participate in the visit. Trinity's main complaint has been its lack of opportunity so to participate, and this would then be satisfied.

At the same time, the principle respecting the judgment and expertise of the agency may be maintained. Again, we know of no case on point.

7

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

In the  
Court of Appeals  
of Maryland

v.

TRINITY ASSEMBLY OF GOD

Petition Docket No. 229

September Term, 1983

(No. 1250, September Term, 1982  
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of and the answer filed thereto, Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy  
Chief Judge

Date: September 14, 1983.

*Rec'd 9-19-83  
12:45 PM*

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1250

September Term, 1982

80-258-A

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

TRINITY ASSEMBLY OF GOD

Moylan  
Bishop  
Garrity,

JJ.

OPINION BY BISHOP, J.  
DISSENTING OPINION BY MOYLAN, J.

Filed: May 2, 1983

*Rec'd 5-3-83  
1:15 PM*

PER CURIAM

People's Counsel of Baltimore County (Counsel) appeals a ruling of the Circuit Court for Baltimore County reversing the action of the Board of Appeals of Baltimore County (the Board), which reversed the Zoning Commissioner's grant of a Petition for Zoning Variance filed by the appellee, Trinity Assembly of God (Trinity).

Trinity's petition requested a variance from Section 413.1 b of the Zoning Regulations of Baltimore County, which permitted "[o]ne bulletin board on church, school, or college property, not over 30 square feet in area." In lieu of the permitted sign, Trinity requested permission to erect two double-face, non-illuminated signs with a total of sixty square feet. Trinity listed four reasons on the petition as the basis for hardship or practical difficulty caused by its compliance with the existing regulation:

1. Large size of site (15.07 acres) requires two signs.
2. Exact location of site confusing from Beltway.
3. Large size sign commensurate to large building for aesthetic value.
4. Location of sign away from road for sight purposes."

The Board affirmed the Zoning Commissioner's authorization of the increase from 30-36 square feet of the sign located at the entrance on Joppa Road, but denied

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5. That the church building now containing 18,000 square feet, will be expanded to 24,000 square feet, and that compared to the proposed size of the church, the signs are small.

The scope of judicial review both as it applies to the Circuit Court in the appeal from the Board, and to this Court in the appeal from the circuit court is that if there was sufficient evidence to make the issue fairly debatable, then the decision of the Board must be affirmed. We are bound by this limitation even though we might well have arrived at a different conclusion from that of the Board. McLean v. Soley, 270 Md. 208, 215-16 (1973).

Section 307 of the Baltimore County Zoning Regulation authorizes the Zoning Commissioner and the County Board of Appeals, upon appeal, to grant variances from sign regulations "... only in such cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." (Emphasis supplied).

In Anderson v. Board of Appeals, 22 Md. App. 28, 40 (1974) we explained the meaning of a regulation such as Section 307:

"While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the 'practical difficulty' standard to area variance applications in only three cases. McLean v. Soley, *supra*, 270 Md. at 213-14, 310 A.2d at 786-87; Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646, 656 (1971); Loyola



2. Whether a zoning board is required to be persuaded by evidence of a petitioner where the petitioner chooses not to produce evidence but rather simply to challenge the persuasiveness of the petitioner's presentation.

3. Whether a zoning board may make an unannounced site visit to supplement its review of the testimony, and whether the use of such evidence can constitute reversible error?

4. Whether, upon a finding that the zoning board was wrong to consider evidence produced by an unannounced site visit, the Court should remand the case to the Board for further consideration, including possibly an announced visit, and whether the failure to do so was a usurpation of the administration function.

(e) The applicable provisions of the Baltimore County Zoning Regulations are appended hereto as Exhibit D.

(f) Statement of Facts in Support of Petition.

In a *de novo* hearing, the County Board of Appeals for Baltimore County ("the Board") denied a sign variance which Respondent Trinity Assembly of God ("Trinity") wanted along the Baltimore Beltway for the benefit of visitors from Washington and other areas.

The property is in Brooklandville, a residential area, on the north side of Joppa Road, bordering the beltway to the east. The entrance is on Joppa, with a sign there. It is the second sign, toward the rear of the west boundary, which is in controversy.

As is the rule, at these *de novo* zoning administrative hearings, the burden of proof is on the property owner requesting approval. Baltimore County Zoning Regulations

criteria set forth in *McLean v. Soley*, 270 Md. 208 (1973), the appellate court held that "reasoning minds could not reach the conclusion reached by the Board." (page 7)

Judge Moylan dissented. He summarized his views at page 4:

"In my judgment, there was a genuine issue of persuasion for the fact-finding Board here. Without any obligation upon the opponent to do anything but hope, the Board on the evidence in this case could well have said to the proponent:

'We believe your witnesses fully. We conclude that every fact you have urged upon us is true. We have heard nothing to the contrary. Nonetheless, we are not persuaded that your evidence adds up to a compelling case for the relief sought. Yours is the risk of non-persuasion and we are unpersuaded.'

I read the majority opinion to say, in effect, that whenever an opponent fails to put on an affirmative defense, the production by a proponent of that barely minimal, *prima facie* case that generates fair debate instantaneously becomes so compelling as to preclude fair debate. There would be in such circumstances no additional burden of persuasion beyond the burden of production; there would rather be placed upon the opponent an affirmative burden of dissuasion. This is not my understanding of the law."

(g) Argument in Support of Petition.

I. The Police Power

The Court of Special Appeals has overlooked the fundamental nature of zoning regulations directed to signs. These are to further traffic safety and the appearance of the community. *Metromedia, Inc. v. City of San Diego* (1981), citing *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949) and *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The Court of Appeals has in sign cases

was to the concept of the variance and addressed to the judgment or discretion of the board in applying the law to the facts. Otherwise stated, the People's Counsel challenged the quality of the evidence - its legal sufficiency, its weight, and its credibility.

Judge Moylan argued by analogy from judicial procedure - the use of directed verdicts, the ability of judges and juries to decide upon the weight of evidence - to show that the majority had confused the burden of production with the burden of persuasion. A review of 3 Davis, *Administrative Law Treatise* (2d Ed. 1980) Sec. 16:9 discloses no apparent cases where the issue has come up in this way. Davis does reiterate the prevailing rule that the burden of persuasion is on the applicant or the regulated person.

It would be in the public interest for this Court to clarify the procedural framework in the usual administrative adjudicatory hearing. We need a better understanding of the burden of persuasion and the appropriateness of drawing from judicial procedure (directed verdicts, etc.). Administrative board members ought to know whether they can reject an application simply because the evidence is not persuasive. They ought to know also whether they have the flexibility to grant, in effect, a directed verdict. These are important questions of first impression which have divided the Court of Special Appeals panel here.

III. The Unannounced Site Visit: Reversible Error

As it was put in *Montgomery County v. National Capital Realty Corporation*, 267 Md. 364, 376 (1972), "...administrative agencies are not generally bound by technical common law rules of evidence, although they must observe the basic rules of fairness as to parties appearing before them..." See also *Maryland Fire Underwriters Rating Bureau v. Insurance Commissioner*, 260 Md. 258 (1971), *Dal Masa v. Board of County Commissioners for Prince George's County*, 238 Md. 333 (1965), *Katz v. Insurance Commission*, 53 Md. App. 420 (1983).

Respectfully submitted,

*John W. Hession, III*  
John W. Hession, III  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

that part of the requested variance which would have permitted the erection of an additional sign on the northwest corner of the property, visible from the Baltimore County Beltway, Interstate 695.

Counsel contends that the Board of Appeals' decision to deny that part of the petition requesting a sign visible from Interstate 695 was based on substantial evidence of the failure of Trinity to meet the required legal standard of practical difficulty or unreasonable hardship and that the Circuit Court, by substituting its judgment for that of the Board, consequently exceeded the proper scope of judicial review.

The only witness to testify before the Board of Appeals was Earl D. Baldwin, Pastor of Trinity Assembly of God Church. His testimony supported the following facts:

1. That the church is located on a 15 acre tract of land bordering on Interstate 695, the Baltimore County Beltway and Joppa Road, a county secondary road;
2. That some persons wishing to attend the church have had great difficulty locating the church from the Beltway;
3. That because the Beltway underpasses Joppa Road the tendency is for persons to drive under Joppa Road without seeing the church and thus miss the proper exit;
4. That based on the Zoning Commissioner's approval a sign of 24 square feet was erected on the Beltway border, and a sign of 36 square feet was erected on the Joppa Road border--a total of 60 square feet;

*Loan Ass'n v. Buschman*, *supra*, 227 Md. at 248-50, 176 A. 2d at 358-59. In each of them the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of 'practical difficulty' alone and that proof of 'hardship' was not required because the governing zoning ordinance, which phrased the criteria of 'practical difficulty or unreasonable hardship' in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied."

In *McLean v. Soley*, *supra*, at 214 the Court set forth the standard of "practical difficulty" in a quote from 2 Rathkopf, *The Law of Zoning and Planning*, (3d ed. 1972) 45-28, 29, which set out the following criteria:

"1) Whether compliance with the strict letter of the restrictions... would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

The above was quoted in the appellant's brief in the following manner:

"In *McLean v. Soley*, 270 Md. 208, 214, 310 A. 2d 783 (1973), the Court of Appeals defined the standard of 'practical difficulty or unreasonable hardship' under BCZR 307:

'1) Whether compliance with the strict letter of the restrictions would unreasonably prevent use of the property for a permitted purpose;

2) Whether substantial justice would be done consistent with interests of other property owners in the neighborhood; and

3) Whether the spirit of the ordinance will be observed and the public safety and welfare secured."

We will assume that the appellant's inaccurate quote set out above was unintentional and certainly not intended to mislead this Court. The above, however, is not the only inaccuracy in appellant's brief. At page 6 in the quoted section from *City of Baltimore v. Mano Swartz*, 268 Md. 79, 90 (1973), there is a deletion of an entire line which leaves the last sentence of the quoted portion to make no sense at all. We strongly recommend that People's Counsel take more care in the future.

Although appellee agrees with the scope of review and the standard to be applied, it points out that zoning decisions, nevertheless, must be based on evidence, *Mayor and City Council of Rockville v. Cotler*, 230 Md. 335 (1963) of which there was none in this case other than that provided by Trinity. The only response in the record to Trinity's evidence is argument by Counsel, and it is

Based on our review of the only evidence presented to the Board and applying all of the criteria set out in *Rathkopf*, *supra*, via *McLean v. Soley*, *supra*, we hold that the implicit findings of the Circuit Court that reasoning minds could not reach the conclusion reached by the Board were correct.

JUDGMENT AFFIRMED.  
COSTS TO BE PAID BY  
APPELLANT.



to this fact that the Circuit Court in its truncated opinion and order referred.

Trinity argues that Counsel failed to rebut any of the evidence presented to the Board, and that based on that evidence reasoning minds could not reasonably reach the conclusion reached by the Board. In Comm'r. v. Cason, 34 Md. App. 487, 508 (1977), we said:

"A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact."

We agree with Trinity that the Board's visit to the site without notice to the parties, and after announcing that the record was closed, was improper. Whatever evidence the Board may have gathered as a result of the visit should not be considered and will not be considered by this Court.

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1250

September Term, 1982

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

TRINITY ASSEMBLY OF GOD

Moylan,  
Bishop,  
Garrity,

JJ.

Dissenting Opinion by Moylan, J.

Filed: May 2, 1983

Respectfully, I dissent. The single issue before us is whether there was a fairly debatable issue before the Board of Appeals of Baltimore County. If there was, the Circuit Court for Baltimore County should have affirmed the decision of the Board.

I agree fully with the statement of law as to the standard of review set forth in the majority opinion:

"The scope of judicial review both as it applies to the Circuit Court in the appeal from the Board, and to this Court in the appeal from the circuit court is that if there was sufficient evidence to make the issue fairly debatable, then the decision of the Board must be affirmed. We are bound by this limitation even though we might well have arrived at a different conclusion from that of the Board. McLean v. Soley, 270 Md. 208, 215-16 (1973)."

In applying that standard, the majority reaches the conclusion that there was no fairly debatable issue simply from the fact that the original petitioner presented evidence before the Board and that People's Counsel for Baltimore County presented none. Such an evidentiary posture is not to my mind dispositive of whether there was a fairly debatable issue.

To my mind, the majority opinion fails to distinguish between the burden in this regard placed upon a proponent and the significantly lesser burden placed upon an opponent. As the moving party, the proponent has allocated to it both the burden of production and the burden of ultimate persuasion. The generation of a fairly debatable issue is neither more nor less than the presentation of a prima facie case. The question is whether the proponent has produced a legally sufficient case to permit (not compel) the fact

Though the zoning law, in its strange way, insists upon using a separate language to describe the same thing, this, to my mind, is all that the notion of a fairly debatable issue connotes.

To say, in the context of zoning law, that there is a fairly debatable issue, is to say that there is a genuine question of fact before the fact-finding body and that it, in its wide discretion, can find in either direction and not be wrong, as a matter of law. To say, on the other hand, that there is no fairly debatable issue, is to say, in effect, that a directed verdict should have been rendered, as a matter of law. Before a reviewing court can assess whether a directed verdict was called for or not, it must determine the direction in which the verdict is being directed. It is easy for a proponent on an issue to suffer an adverse directed verdict, for the proponent bears the burden of production. It is far more difficult for a mere opponent to suffer an adverse directed verdict, however, for the opponent bears no burden of either production or persuasion. The opponent has no legal obligation to do anything. The opponent may simply rely upon the inadequacy of the proponent's case.

For the proponent's case to be adequate to permit consideration by the fact finder by no means implies that the proponent's case is so adequate as to foreclose consideration by the fact finder. Avoiding a directed verdict against one is not, ipso facto, an entitlement to a directed verdict in one's favor. In between lies that broad intermediate zone known as fact finding (in the parochial language of zoning, the world of fair debate) where the fact finder

494-31C0

County Board of Appeals

Room 219, Court House  
TOWSON, MARYLAND 21204

October 22, 1982

Mr. Julius A. Romano  
Clerk of the Court of Special Appeals of Maryland  
Annapolis, Maryland 21404

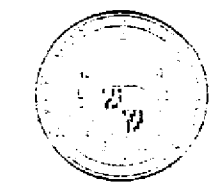
Re: Case No. 1250 September Term 1982  
Trinity Assembly of God

Dear Mr. Romano:

Please forward to this office a copy of the opinion in the above entitled case when it is filed by the Court of Special Appeals. We would appreciate it if you would note our request in your file on this case. Thank you.

Very truly yours,

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary



HOWARD E. FRIEDMAN  
CLERK

1250

September Term, 19 82

People's Counsel for  
Baltimore County

John W. Hessian, III, Esquire  
Peter Max Zimmerman, Esquire

Attorneys for Appellant

Trinity Assembly of God

S. Ronald Ellison, Esquire  
Alan F. M. Garten, Esquire

Attorneys for Appellee

The Record in the captioned appeal was received and docketed on October 20, 1982.

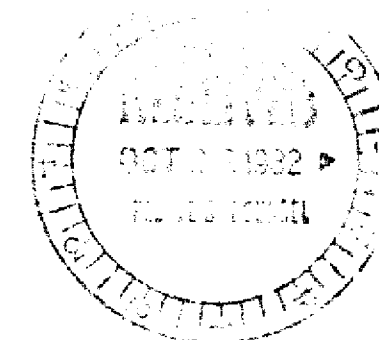
The brief of the APPELLANT is to be filed with the office of the Clerk on or before November 29, 1982.

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of the appellant brief (Rule 1030a2).

This appeal is set for argument before this Court during the week of April 11, 12, 13, 14, 15, 18, 19, & 20, 1983.

Stipulations as to the time within which to file briefs will not be granted where the appellant's brief argument (Rule 1030a1).

Counsel is advised to advise the office of the Clerk (Pursuant to Rule 1047 of the Court of Special Appeals) at the time of filing his brief. No submission on briefs will be accepted within ten (10) days prior to the date of argument without the approval of the Court.



HOWARD E. FRIEDMAN  
Clerk of the Court of  
Special Appeals of Maryland



Baltimore County, Maryland

PEOPLE'S COUNSEL  
RM. 223, COURT HOUSE  
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III  
People's Counsel  
PETER MAX ZIMMERMAN  
Deputy People's Counsel

TEL 49-1-2188

December 15, 1981

Ms. Joyce Grimm, Director  
Assignments Office  
Circuit Court for Baltimore County  
Courts Building  
Towson, Maryland 21204

RE: Trinity Assembly of God, Petitioner/Appellant  
Circuit Court Misc. Law Case #7662

Dear Ms. Grimm:

The above matter is presently set for Friday, January 8, 1982, at 9:30 am.

Unfortunately, the United States Court of Appeals in Richmond has scheduled oral argument for that day on a matter in which I am involved.

Since I am handling the Trinity Assembly of God case, I must respectfully request a postponement.

Very truly yours,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel

cc: Alan Garten, Esquire  
Feddor & Garten  
36 S. Charles Street  
Baltimore, MD 21201

PMZ:sh

RECEIVED  
BALTIMORE COUNTY  
JAN 21 1982  
JAN 21 1982  
JAN 21 1982

494-3180

County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204

September 1, 1981

John W. Hessian, Esq.  
People's Counsel  
Court House  
Towson, Md. 21204

Dear Mr. Hessian:

Re: Case No. 80-258-A  
Trinity Assembly of God

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.

cc: Mr. Earl D. Baldwin  
J. E. Dyer  
W. Hammond  
J. Hoswell  
N. Gerber



finder (in this case, the Board of Appeals) to be persuaded. In the present case, the petitioner-appellee clearly did present a prima facie, legally sufficient case. In the language of zoning law, it generated a fairly debatable issue.

To have met the production burden, however, is not the same as to meet the burden of persuasion. There is still allocated to the petitioner the obligation to persuade the fact finder to find for the petitioner. A case sufficient to permit a finding for the petitioner is not necessarily a case that compels a finding for the petitioner. The fact finder always has the prerogative to be unpersuaded by evidence even if the evidence is uncontradicted.

There is no reciprocal legal obligation upon the opponent of a proposition to carry either a burden of production or a burden of persuasion. The opponent may be tactically well-advised to counter the proponent with countervailing evidence. In the alternative, however, the opponent may simply argue (sometimes successfully) that the proponent's case is not persuasive. In my judgment, the proponent here generated a fairly debatable issue, which would have permitted the fact-finding Board of Appeals to rule in its favor but which would not compel such a ruling. The majority does not suggest that the uncontradicted case for the petitioner was so compelling, clear and decisive as to permit no conclusion other than a finding in the proponent's favor. As long as the proponent bears the risk of non-persuasion, I see no duty whatsoever upon the opponent to contradict. It is enough to controvert and to hope that the fact finder will be unpersuaded.

may be persuaded or may remain unpersuaded. The risk of non-persuasion is still upon the proponent even after he has mounted a prima facie case. It seems self-evident that the fact finder may be legitimately unpersuaded even where the opponent simply stands pat.

In my judgment, there was a genuine issue of persuasion for the fact-finding Board here. Without any obligation upon the opponent to do anything but hope, the Board on the evidence in this case could well have said to the proponent:

"We believe your witnesses fully. We conclude that every fact you have urged upon us is true. We have heard nothing to the contrary. Nonetheless, we are not persuaded that your evidence adds up to a compelling case for the relief sought. Yours is the risk of non-persuasion and we are unpersuaded."

I read the majority opinion to say, in effect, that wherever an opponent fails to put on an affirmative defense, the production by a proponent of that barely minimal, prima facie case that generates fair debate instantaneously becomes so compelling as to preclude fair debate. There would be in such circumstances no additional burden of persuasion beyond the burden of production; there would rather be placed upon the opponent an affirmative burden of dissuasion. This is not my understanding of the law.

EARL D. BALDWIN, FOR  
TOM McDONALD, MINISTER OF MUSIC  
TOM KNOTT, DIRECTOR OF CHRISTIAN EDUCATION

TRINITY ASSEMBLY OF GOD  
OFFICE OF THE PASTOR

Oct. 1, 1981

Clerk of the Circuit Court of  
Baltimore County  
Towson, MD 21204

Gentlemen:

Please file an appeal from a decision handed down by the County Board of Appeals, No. 80-258-A in reference to the petition for variance concerning the Trinity Assembly of God Church.

Very truly yours,

*Earl D. Baldwin*  
Earl D. Baldwin  
President

EDB:rem

cc: County Board of Appeals

BALTIMORE COUNTY  
OCT 5 10 37 AM '81  
COUNTY BOARD  
OF APPEALS  
BY: \_\_\_\_\_

TELEPHONE  
(410) 821-6573

7/26/82  
10/19/81  
10/26/81

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204  
October 6, 1981

John W. Hession, III, Esq.  
People's Counsel  
Court House  
Towson, Md. 21204

Dear Mr. Hession:

Re: Case No. 80-258-A  
Trinity Assembly of God

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: J. E. Dyer  
W. Hammond  
J. Hoswell  
N. Gerber

October 6, 1981

BILLED TO: Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Md. 21093

Cost of certified documents filed  
in Case No. 80-258-A . . . . . \$ 13.00

Trinity Assembly of God  
NE/C Joppa Road and I-695  
8th District

MAKE CHECKS PAYABLE TO: Baltimore County, Md.

REMIT TO: No. 85084

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE Oct. 9, 1981 ACCOUNT 01.212

AMOUNT \$13.00

RECEIVED FROM Earl D. Baldwin, Trinity Assembly of God, 2122 W. Joppa Road, Lutherville, Md.

FOR Case No. 80-258-A  
Trinity Assembly of God

010\*\*\*\*\*1300\*\* 2095F  
VALIDATION OR SIGNATURE OF CASHIER

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204  
October 6, 1981

Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Md. 21093

Dear Mr. Baldwin:

Re: Case No. 80-258-A  
Trinity Assembly of God

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encls.

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204

March 18, 1981

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 80-258-A

TRINITY ASSEMBLY OF GOD

NE/C of Joppa Rd. & I-695

8th District

Variance-Sec. 413.1b, 2 double face non-illuminated signs for a church

8/22/80 - Z.C. (Hammond) GRANTED variance subject to the approval of a site plan

TUESDAY, JUNE 23, 1981, at 11 a.m.

ASSIGNED FOR:

cc: Mr. Earl D. Baldwin

Petitioner

J. W. Hession, Esq.

People's Counsel

J. E. Dyer

Zoning

Wm. Hammond

J. Hoswell

N. Gerber

June Holmen, Secy.

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

June 5, 1980

Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093

RE: Petition for Variance  
NE/C Joppa Road and I-695  
Case No. 80-258-A

Dear Sirs:

This is to advise you that \$53.75 is due for advertising and posting of the above-property.

Please make check payable to Baltimore County, Maryland and remit to Sondra Jones, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

*William E. Hammond*  
WILLIAM E. HAMMOND  
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 088831

DATE June 11, 1981 ACCOUNT 01-662

AMOUNT \$53.75

RECEIVED FROM Trinity Assembly of God

FOR Advertising and Posting for Case No. 80-258-A

082780012 53.75 net  
VALIDATION OR SIGNATURE OF CASHIER



May 21, 1980

Earl D. Baldwin, Pastor  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093

NOTICE OF HEARING

RE: Petition for Variance - NE/C Joppa Road and I-695  
Case No. 80-258-A

TIME: 1:30 P.M.

DATE: Tuesday, June 17, 1980

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

*William E. Hammond*  
ZONING COMMISSIONER OF  
BALTIMORE COUNTY

PETITION FOR VARIANCE  
8th District  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093  
DATE: Tuesday, June 17, 1980 at 1:30 P.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland  
The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the following petition for variance to the Zoning Regulations to be held as follows:  
Section 413.1b - One bulletin board on church, school, or college property, not over 30 square feet in area  
All that parcel of land in the Eighth District of Baltimore County  
All that parcel of land (15.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Rd. From a pipe set at the point formed by the intersection of N.E. side of Joppa Rd. & I-695 - East on radius 7514.44' - 1750.24', S62 degrees 14'56" E 239.79', S17 degrees 12'09" W 140.38'; S02 degrees 31'32" E 250.96'; N 75 degrees 22'42" W 265.09'; S41 degrees 46' 39" W 1421.61'; N 47 degrees 57'55" W 158.14'; N 34 degrees 49'53" W 154.03'; N 36 degrees 52'49" W 79.39' to place of beginning.  
Trinity Assembly of God  
2122 W. Joppa Rd.  
Lutherville, Md. 21093  
Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland  
BY ORDER OF  
WILLIAM E. HAMMOND  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION  
A 1788

Pikesville, Md., May 29, 1980

THIS IS TO CERTIFY, that the annexed advertisement as published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore county, Maryland before the 17th day of June 1980  
the first publication appearing on the 29th day of May 1980  
the second publication appearing on the day of 1980  
the third publication appearing on the day of 1980

THE NORTHWEST STAR

*Phyllis Hedberg*  
Manager

Cost of Advertisement 26.00

Mr. William E. Hammond  
Zoning Commissioner  
Room 109, County Office Building  
Towson, Maryland 21204

RE: Case No. 80-258-A  
Building Permit Application  
No. 30177  
8th Election District

Dear Mr. Hammond:

We, the undersigned, being the owner of the above mentioned property and the applicant for the above referenced building permit, do hereby acknowledge that we are fully aware of your Order being subject to a thirty (30) day appeal period, but wish to go ahead with the construction of improvements on the property prior to the expiration of said appeal period.

We hereby relieve our builder, Baltimore County Maryland and you from any liability or responsibility in this matter and agree to assume any and all financial responsibility for any consequences which might arise during the appeal period if an appeal is filed after construction has begun.

Very truly yours,

*Earl D. Baldwin*  
Trinity Assembly of God

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond  
Zoning Commissioner

Date: June 4, 1980

TO: John D. Seyffert, Director  
Office of Planning and Zoning

FROM: Petition No. 80-258-A Item 195

Petition for Variance for signs  
Northeast corner of Joppa Road and I-695  
Petitioner - Trinity Assembly of God

Eighth District

HEARING: Tuesday, June 17, 1980 (1:30 P.M.)

There are no comprehensive planning factors requiring comment on this petition.

*John D. Seyffert*  
John D. Seyffert, Director  
Office of Planning and Zoning

JDS:JGH:ab

PETITION FOR VARIANCE

8th District

ZONING: Petition for Variance for signs

LOCATION: Northeast corner of Joppa Road and I-695

DATE & TIME: Tuesday, June 17, 1980 at 1:30 P.M.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit two double-face non-illuminated signs in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet

The Zoning Regulation to be excepted as follows:

Section 413.1b - One bulletin board on church, school, or college property, not over 30 square feet in area

All that parcel of land in the Eighth District of Baltimore County

Being the property of Trinity Assembly of God, as shown on plat plan filed with the Zoning Department

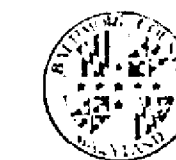
Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.

Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF  
WILLIAM E. HAMMOND  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

All that parcel of land (15.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Rd. From a pipe set at the point formed by the intersection of N.E. side of Joppa Rd. & I-695 - East on radius 7514.44' - 1750.24', S62 degrees 14'56" E 239.79', S17 degrees 12'09" W 140.38'; S02 degrees 31'32" E 250.96'; N 75 degrees 22'42" W 265.09'; S41 degrees 46' 39" W 1421.61'; N 47 degrees 57'55" W 158.14'; N 34 degrees 49'53" W 154.03'; N 36 degrees 52'49" W 79.39' to place of beginning.

Trinity Assembly of God  
2122 W. Joppa Rd.  
Lutherville, Md. 21093



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

August 22, 1980

Reverend Earl D. Baldwin  
2122 West Joppa Road  
Lutherville, Maryland 21093

RE: Petition for Variances  
NE/corner of Joppa Road and Interstate 695 - 8th Election District  
Trinity Assembly of God - Petitioner  
NO. 80-258-A (Item No. 195)

Dear Reverend Baldwin:

I have this date passed my Order in the above referenced matter in accordance with the attached.

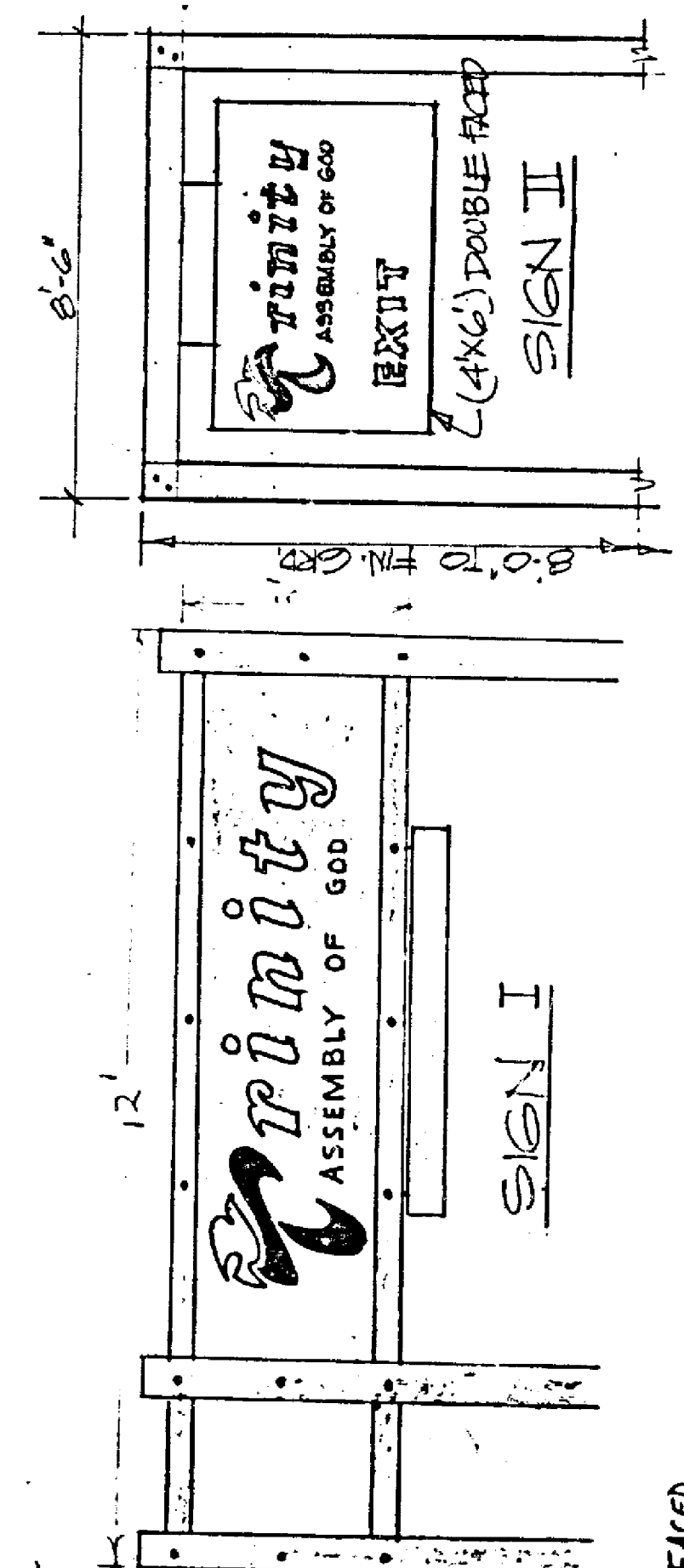
Very truly yours,

*William E. Hammond*  
WILLIAM E. HAMMOND  
Zoning Commissioner

WEH/srl

Attachments

cc: John W. Hessian, III, Esquire  
People's Counsel



*John D. Seyffert*  
John D. Seyffert, Director  
Office of Planning and Zoning

DOUBLE FACED  
TRINITY ASSEMBLY OF GOD  
2122 W. JOPPA RD.  
LUTHERVILLE, MD 21093



## BALTIMORE COUNTY OFFICE OF PLANNING &amp; ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your Petition has been received this 5 day of Feb, 1982

Filing Fee \$ \_\_\_\_\_ Received: \_\_\_\_\_ Check  
\_\_\_\_\_ Cash  
\_\_\_\_\_ Other

Petitioner Trinity Assembly of God Submitted by William E. Hammond  
Petitioner's Attorney \_\_\_\_\_ Reviewed by William E. Hammond

\*This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

## PETITION MAPPING PROGRESS SHEET

| FUNCTION  | Wall Map   |    | Original |    | Duplicate |    | Tracing |    | 200 Sheet |    |
|---|--|----|----------|----|-----------|----|---------|----|-----------|----|
|   | date   | by | date     | by | date      | by | date    | by | date      | by |
| Descriptions checked and outline plotted on map |  |    |          |    |           |    |         |    |           |    |
| Petition number added to outline                |  |    |          |    |           |    |         |    |           |    |
| Denied  |  |    |          |    |           |    |         |    |           |    |
| Granted by<br>ZC, BA, CC, CA                    |  |    |          |    |           |    |         |    |           |    |
| Reviewed by: <u>WPH</u>                         | Revised Plans:<br>Change in outline or description _____ Yes<br>_____ No |    |          |    |           |    |         |    |           |    |
| Previous case: _____                            | Map # _____  |    |          |    |           |    |         |    |           |    |

PETITION FOR VARIANCE  
8th DISTRICT

ZONING: Petition for Variance for signs  
LOCATION: Southeast corner of Joppa Road and I-695  
DATE & TIME: Tuesday, June 17, 1980 at 1:30 P.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petitioner for Variance to permit two 4' x 6' non-illuminated signs in lieu of the permitted one 60 square feet in area of the permitted 60 square feet.

The Zoning Regulation to be accepted as follows:  
Section 47B.11-1.1. Variance Board  
on church, school, or place of worship, not over 30 square feet in area all that parcel of land in the Eighth District of Baltimore County All that parcel of land (11.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Road. From a point at the point formed by the intersection of N.E. side of Joppa Road & I-695 East on radius 7614.44' 175.84' S 62 degrees 14' 50" E 228.72' S 17 degrees 12' 09" W 140.82' S 02 degrees 21' 50" E 250.80' N 75 degrees 22' 43" W 265.09' S 41 degrees 49' 59" W 1421.31' N 47 degrees 07' 59" W 158.14' N 34 degrees 49' 59" W 154.03' N 38 degrees 52' 49" W 79.38' to place of beginning

Being the property of Trinity Assembly of God, as shown on p.d. plan filed with the Zoning Department

Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By Order of:  
WILLIAM E. HAMMOND,  
Zoning Commissioner  
of Baltimore County  
May 28.

## CERTIFICATE OF PUBLICATION

TOWSON, MD May 22, 1980

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on ~~once a week~~ of one time ~~times a week~~ before the 17th day of June, 1980, the next publication appearing on the 29th day of May 1980.

THE JEFFERSONIAN,  
L. Frank Simpson  
Manager.

Cost of Advertisement, \$ \_\_\_\_\_

Reverend Earl D. Bald  
2122 West Joppa Road  
Lutherville, Maryland 21093

## BALTIMORE COUNTY OFFICE OF PLANNING &amp; ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 8th day of May, 1980.

WILLIAM E. HAMMOND  
Zoning Commissioner

Petitioner Trinity Assembly of God

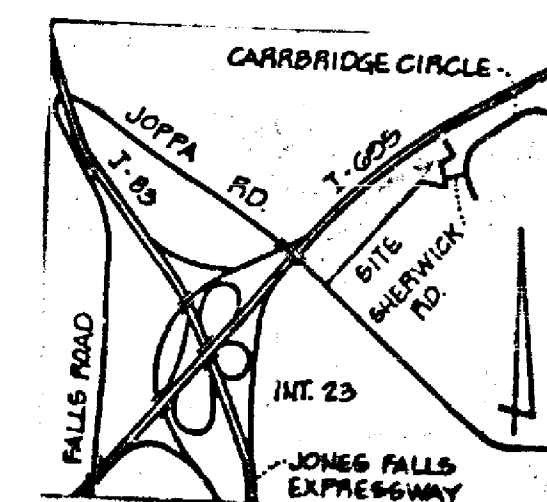
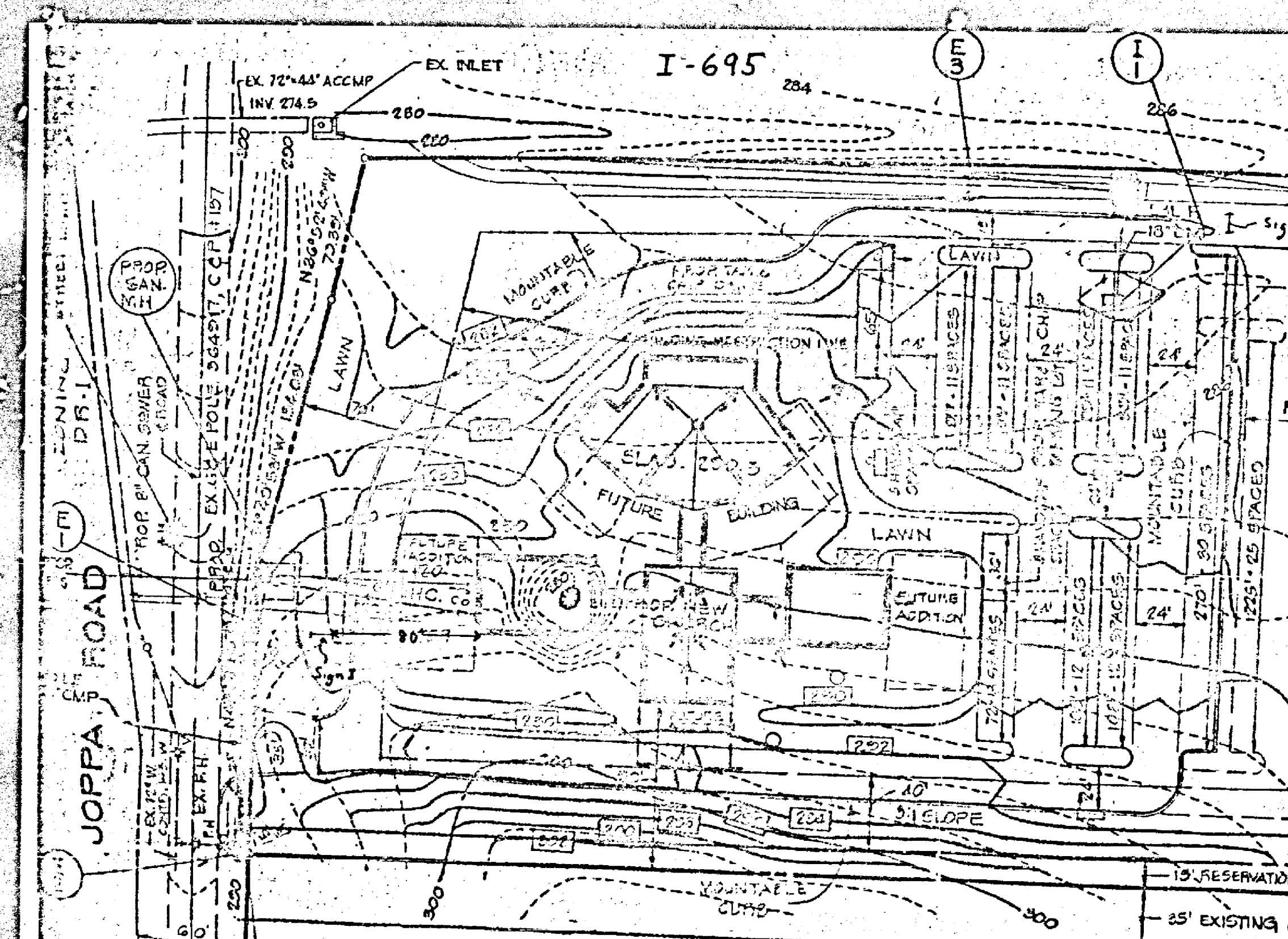
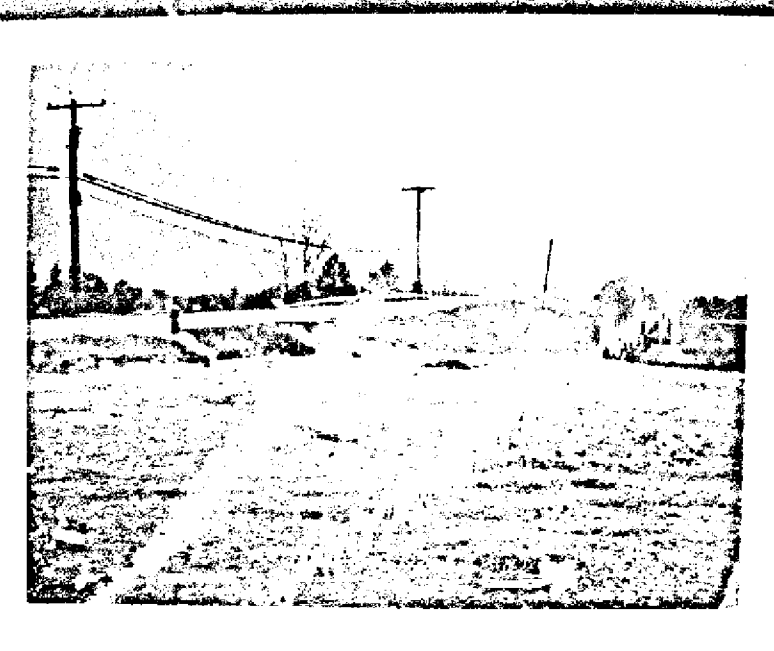
Petitioner's Attorney \_\_\_\_\_

Reviewed by: Nicholas E. Commodari  
Nicholas E. Commodari  
Chairman, Zoning Plans  
Advisory Committee

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 8 Date of Posting 6/1/80  
Posted for: Petition for Variance  
Petitioner: Trinity Assembly of God  
Location of property: NE 1/4 Joppa Rd. & I-695  
Location of Signs: front of property (2122 W. Joppa Rd.)  
Remarks: \_\_\_\_\_  
Posted by: Earl D. Bald Date of return: 6/5/80  
Signature \_\_\_\_\_



VICINITY MAP

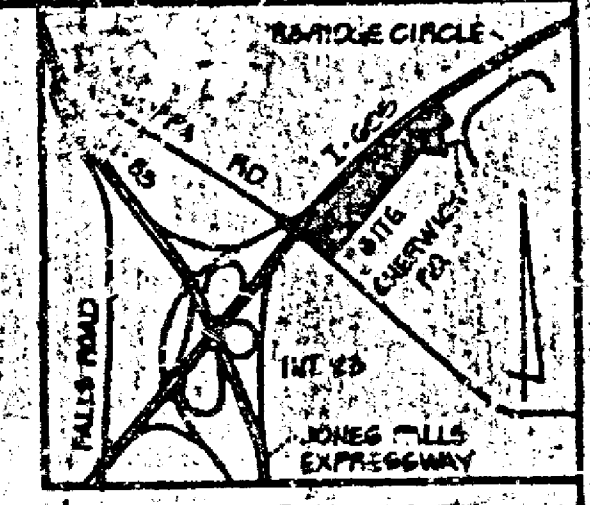
SITE PLAN FOR  
SIGN VARIANCE  
• TRINITY ASSEMBLY OF  
GOD CHURCH •  
ZONED D.R. 1  
8th ELECTION DISTRICT  
SCALE 1"=60'

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

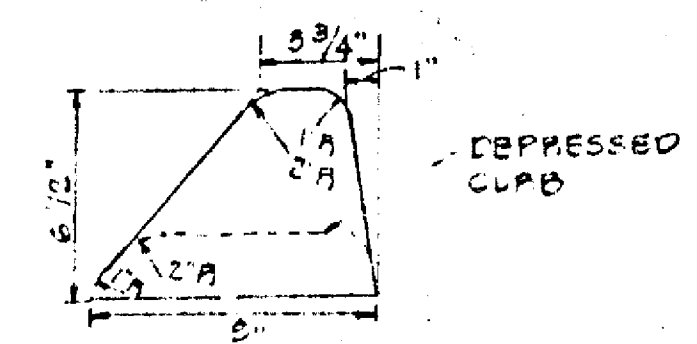
District 8th Date of Posting OCT. 16, 1980  
Posted for: APPEAL  
Petitioner: TRINITY ASSEMBLY OF GOD  
Location of property: NE CORNER Joppa Rd. & I-695  
Location of Signs: FRONT 2122 W. Joppa Rd.  
Remarks: \_\_\_\_\_  
Posted by: Nicholas E. Commodari Date of return: OCT. 31, 1980  
Signature \_\_\_\_\_  
Number of Signs: ONE



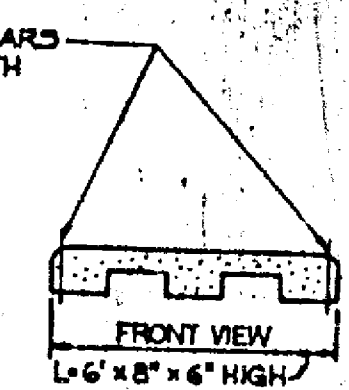


### GENERAL NOTES

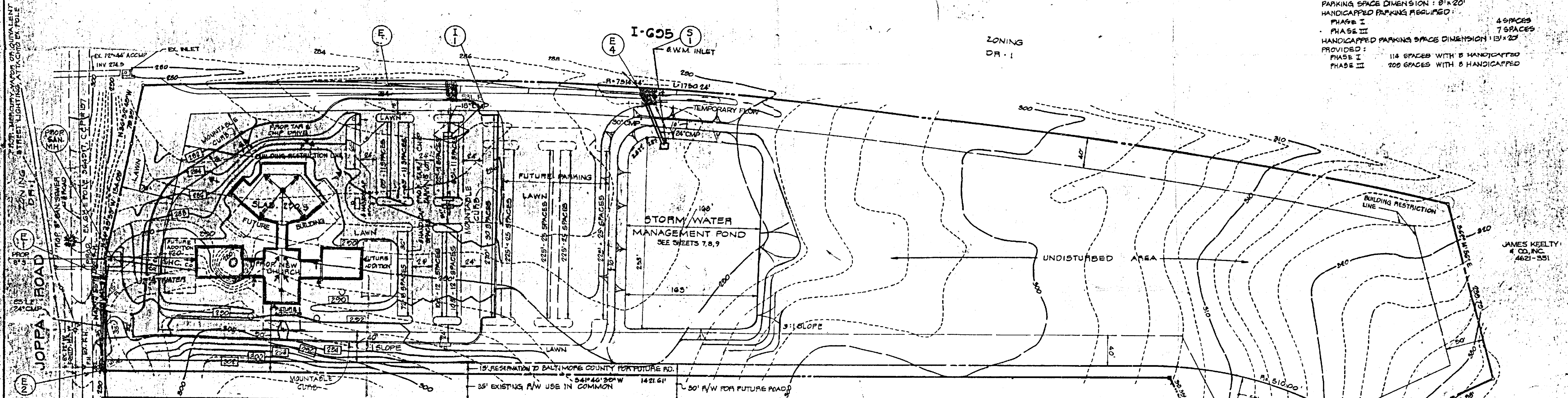
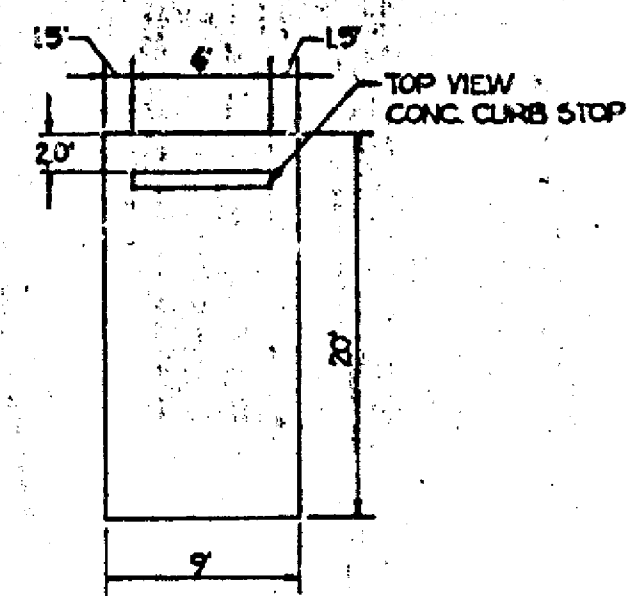
- TOTAL AREA OF SITE: 15.068 AC
- EXISTING USE: VACANT
- PROPOSED USE: CHURCH
- EXISTING ZONING: DR-1
- PARKING:
  - REQUIREMENT: 1 SPACE/6 SEATS
  - SPACES REQUIRED:
    - PHASE I CAPACITY 587 PERSONS + 98 SPACES
    - PHASE II CAPACITY 1212 PERSONS + 202 SPACES
  - SPACES PROVIDED:
    - PHASE I 48 SPACES
    - PHASE II 7 SPACES
  - HANDICAPPED PARKING SPACE DIMENSION: 13' x 20'
  - PROVIDED:
    - PHASE I 114 SPACES WITH 8 HANDICAPPED
    - PHASE II 200 SPACES WITH 8 HANDICAPPED



MOUNTABLE CURB  
SECT. ON  
BALTO. CO. PLATE R-20



TYPICAL PARKING SPACE WITH  
INSTALLATION OF CURB STOP

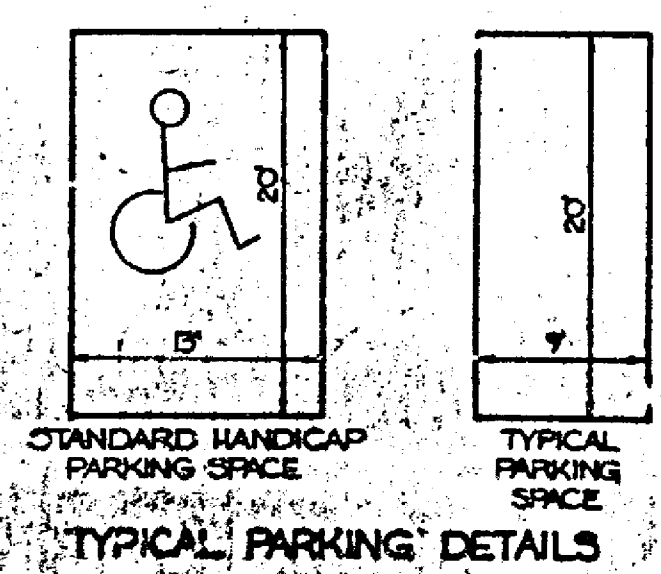


### SITE LIGHTING NOTES:

- LIGHTING FIXTURE TYPE/S, NOTES AND LOCATIONS ARE FURNISHED BY NYE & ASSOCIATES, INC., ARCHITECTS AND ENGINEERS; AND IN PART ARE AS FOLLOWS:
- ALL ELECTRICAL WIRING AND EQUIPMENT INSTALLATION SHALL COMPLY WITH ALL NATIONAL, STATE AND LOCAL CODES FOR PUBLIC BUILDINGS.
- CONTRACTOR: PLEASE NOTIFY BALTIMORE GAS & ELECTRIC CO. AND C&P TELEPHONE CO. AT LEAST THREE DAYS BEFORE STARTING WORK SHOWN ON THIS DRAWING BY CALLING: MGS UTILITY: 559-0100.
- THE ELECTRICAL CONTRACTOR SHALL REVIEW THE TOTAL POWER REQUIREMENTS WITH THE POWER COMPANY. IF SERVICE INSTALLATION RULES ARE NOT SATISFIED NOTIFY THE ARCHITECT OF REQUIREMENTS.
- OUTSIDE FLOODLIGHTING FIXTURES SHALL BE FOCUSED AFTER DARK THE FACADE LIGHTING AND SPIRE LIGHTING FIXTURES SHALL BE TIMER CONTROLLED SET FOR DUSK TO DAWN OPERATION.
- FACADE, WALKWAY AND PARKING LOT LIGHTING FIXTURES TO BE SET IN CONCRETE BASES BY ELECTRICAL CONTRACTOR.
- CONDUIT AND CABLE EMBEDDED UNDER DRIVEWAYS & PARKING AREAS SHALL BE INSTALLED IN A MANNER TO INSURE PROTECTION FROM DAMAGE DUE TO VEHICLE LOAD.

### LEGEND

- HOLOPHANE TM6 SERIES RECESSED BIG EYE EMERGENCY LIGHTING UNIT W/NO. OF LENS HEADS AS INDICATED AND PROVISIONS FOR REMOTE C&T WIRING.
- LIGHTALARM (SERIES X5) EXIT SIGNS, W/ARROWS AS INDICATED.
- HOLOPHANE REMOTE LAMP HEAD - FOR OUTDOOR INSTALLATION 4400 SERIES.
- TELEPHONE OUTLET



TYPICAL PARKING DETAILS

OWNER & DEVELOPER  
TRUSTEES OF THE TRINITY ASSEMBLY OF GOD  
HARFORD ROAD & PARADISE DRIVE  
BALTIMORE, MD 21214

REV. ADDED MOUNTABLE CURB ON PERIMETER OF SITE PAVING. MODIFY ENTRANCE AS SHOWN. 3/27/78

AUG 2 1978  
BUEHLER ASSOCIATES, INC.

| SITE PLAN                               |                      |                       |                              |  |
|---|----------------------|-----------------------|------------------------------|--|
| PROJECT: TRINITY ASSEMBLY OF GOD CHURCH |                      |                       |                              |  |
| LOCATION: 8 TH ELECTION DISTRICT        |                      | BALTIMORE COUNTY, MD. |                              |  |
| DATE: JULY, 1978                        | DESIGN BY: P.M./W.N. | DRAWN BY: J.B./W.N.   | CHECKED BY: P.M.             |  |
| SCALE: 1" = 50'                         | JOB NO.: 11237       | DRAWING NO.: DR-1     |                              |  |
| bopender associates                     |                      |                       | engineers/surveyors/planners |  |







## IV. APPLICATION TO THE PRESENT CASE

## A. Use of the Property

There was no evidence that the sign variance was needed in order to use the property. The church was and is functioning, and there is no contention that its continued operation depends on having a second sign. In this connection, the variance is requested, in effect, for the "personal convenience" of the church and, as such, must be denied. See Carney v. City of Baltimore, 201 Md. 130, 93 A.2d 74 (1952).

## B. Substantial Justice in the Neighborhood

The church is situated in a residential neighborhood. The zoning in the immediate area is residential. The sole remaining feature of interest is that the property abuts the Baltimore Beltway.

In this connection, the Petitioner produced no evidence to support the suitability of an additional sign in the area or as it affected an interstate highway. In the absence of substantial reasons in support of a variance request, it must be denied. Carney, supra.

## C. Spirit and Intent of the Ordinance

In the present case, the matter of equity in the neighborhood combines with the matter of interpretation of the pertinent sign regulation.

Whether considered as to traffic safety or preservation of the character of the neighborhood, the Petitioner again failed to meet its burden of proof. Moreover, as to traffic, the County Board of Appeals made a specific finding that the freeway sign would be a distraction to motorists.\* It might also have added that to grant this variance would set a dangerous precedent for proliferation of signs along the Beltway unrelated to any public function.

## V. CONCLUSION

Under all of the above circumstances, the decision of the County Board of Appeals to deny the petition of Trinity Assembly of God for a sign variance not only was fairly debatable, but also was absolutely required. The Circuit Court is, therefore, respectfully requested to affirm.

\*The Circuit Court affirmed a somewhat similar Board of Appeals decision, founded on photographic evidence, in Ridgely Realty, Misc. Law No. 7305, opinion attached hereto.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE  
PETITION FOR VARIANCE : COUNTY BOARD OF APPEALS  
West side of York Road, 535' North of :  
Ridgely Road : OF  
8th District :  
Ridgely Realty Co., Inc., : BALTIMORE COUNTY  
Petitioner :  
No. 80-142-XA

## OPINION

This case comes before this Board on appeal from a decision by the Zoning Commissioner denying the requested Special Exception and accompanying Variance. The case was heard in its entirety, "De Novo", on June 12, 1980.

Petitioner's case first described the proposed sign and the area adjacent to it. Proposed sign is a standard "Billboard" type structure on property zoned BL on the west side of York Road, 535 ft. north of Ridgely Road. The variance requested to allow a two faced sign so it would be readable from both directions rather than having a blank side. Petitioner testified that all requirements of Section 502.1 have been satisfied and that said Special Exception and Variance should be granted.

Baltimore County representatives opposed the granting of this special exception for several reasons. There was much discussion as to the distance from the proposed sign to the nearest residences. No firm distance was established but it is clear to this Board that some residences do exist along this section of York Road. Mr. Norman Gerber, from the Baltimore County Planning Department, testified that the Planning Department opposes this request and feels it to be out of character with the general area and would be a bad impact on said area. He also noted that the property directly to the north on the west side of York Road was zoned MR, a highly restrictive zoning classification, and that directly across from this MR was DR 16 zoning.

After consideration of all the testimony and exhibits presented this case, the Board is of the opinion that the Zoning Commissioner's decision to deny this request was in fact correct. Several facts buttress this opinion.

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel

John W. Hession, III  
John W. Hession, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 12th day of January, 1982, a copy of the foregoing Memorandum in Opposition to Petition for Appeal was mailed to Alan Garten, Esquire, Fedder & Garten, 36 S. Charles Street, Baltimore, Maryland 21201.

Peter Max Zimmerman  
Peter Max Zimmerman

Ridgely Realty Co., Inc.  
Case No. 80-142-XA

The sign as proposed would surely be visible from the DR 16 zoned area to the north. Also, a close examination of Petitioner's Exhibit 1B shows the sign to be directly atop a rise in York Road with autos disappearing directly past the sign down the hill toward Ridgely Road. The Board is of the opinion that this would in fact create a distraction to motorists at this point and would increase the traffic hazards as now exist along York Road. For these reasons, the Board is of the opinion that the Order of the Zoning Commissioner dated March 5, 1980, is correct and will so order.

## ORDER

For the reasons set forth in the foregoing Opinion, it is this 3rd day of September, 1980, by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner, dated March 5, 1980, be affirmed and the Special Exception request be DENIED. The requested Variance becomes moot upon the denial of the Special Exception and is therefore also DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Walter A. Reiter, Chairman

William T. Hackett  
William T. Hackett

Patricia Millhauser  
Patricia Millhauser

RECEIVED  
BALTIMORE COUNTY  
JUN 12 12 43 PM '82  
COUNTY BOARD  
OF APPEALS  
BY:

PETITION FOR SPECIAL EXCEPTION \* IN THE  
for double-face advertising structure \* CIRCUIT COURT  
and VARIANCE from Section 413.3a \*  
of the Baltimore County \*  
Zoning Regulations \* FOR  
W/S York Road 535' \* BALTIMORE COUNTY  
N. of Ridgely Road \* AT LAW  
8th District \* 12/355/7305  
Ridgely Realty Co., Inc. \*  
Petitioner \*  
Zoning File No. 80-142-XA \*

CLOSED

\*\*\*\*\*  
OPINION AND ORDER

The Petition of Ridgely Realty, Inc. for a Special Exception and variance to erect a double faced custom built sign of 500 square feet in lieu of a single faced unit, on the West side of York Road, 535 feet north of Ridgely Road was denied by the County Board of Appeals for Baltimore County on September 3, 1980.

Appellant contends it met all the requirements of Section 502.1 of the Baltimore County Zoning Regulations and the action of the Board was arbitrary, capricious and against the weight of the evidence and should be reversed on appeal.

The review by this Court of the action of the County Board of Appeals is narrow and if the Court finds substantial evidence to support the decision, even if debatable, it must affirm.

The opinion of the Board in its finding of a traffic hazard based on Petitioner's Exhibit 1B is not supported by any testimony of a traffic expert. The photograph, however, could be evidence for the Board to reach its decision. City of Balto. v. Mano Swartz, 268 Md. 79 at p. 87.

APMG/11b  
6/2/82

TRINITY ASSEMBLY OF GOD \* IN THE CIRCUIT COURT  
Appellant \* FOR BALTIMORE COUNTY  
\*  
\* FOR BALTIMORE COUNTY  
v. \* AT LAW  
BALTIMORE COUNTY BOARD OF APPEALS \* Misc. No. 7662  
Appellee \*

## MOTION FOR POSTPONEMENT

Mr. Clerk:

Please postpone the above-captioned case that is scheduled for a hearing on July 9, 1982 at 9:30 A.M. for the reasons that I am already scheduled to appear in the District Court of Maryland for Baltimore City in the cases of American Bail Bond vs. Hilda Johnson et al Case No. 19069-81 and Action T.V. Rentals, Inc. vs. Brayboy Case No. 35385-81.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 1982, a copy of the foregoing Motion for Postponement was mailed to Peter Max Zimmerman at the People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland

Alan F.M. Garten, Esquire

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

Most importantly, however, Section 502.1a must be satisfied by Petitioner, sic:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955.]  
a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]..."

There was substantial evidence, at least debatable, before the Board in the testimony of Norman Gerber, Director of the Office of Planning and Zoning of Baltimore County, that the proposed sign is out of character with the surrounding area thus generally being adverse to the general welfare of the community.

Therefore, it is this 2nd day of September, 1981, by the Circuit Court for Baltimore County, ORDERED, that the order of the County Board of Appeals of Baltimore County denying the Special Exception and Variance is affirmed.

Austin W. Brizewich  
AUSTIN W. BRIZEWICH, Judge

Copies sent to:

Ira C. Cooke, Esquire  
John W. Hession, III, Esquire  
Peter Max Zimmerman, Esquire

APMG/11b  
5/24/82

TRINITY ASSEMBLY OF GOD \* IN THE CIRCUIT COURT  
Appellant \* FOR BALTIMORE COUNTY  
v. \* AT LAW  
BALTIMORE COUNTY BOARD OF APPEALS \* Misc. No. 7662  
Appellee \*

## MEMORANDUM

Trinity Assembly of God, by its attorney, S. Ronald Ellison, Alan F.M. Garten, and Fedder and Garten P.A., in support of its Petition on Appeal states:

## FACTS

Trinity Assembly of God (hereinafter referred to as "Trinity Assembly") is a duly incorporated church under the laws of the State of Maryland. Trinity Assembly is the owner of a parcel of land in Baltimore County consisting of fifteen acres bounded on the West by Interstate 695 (Baltimore Beltway) and on the South by Joppa Road. Approximately 18,000 square feet of this acreage is improved by the church building. Trinity Assembly is now in the process of planning an additional 6,000 square feet of improvements which will consist of an increased nave, a future education wing, a narthex complex, and an enlarged nursery. Between 800 to 1,000 persons attend religious services at Trinity Assembly each week and several hundred other persons use the Church's facilities throughout the month for various other functions. If the future additions become a realization an additional 400 to 500 persons will use the facility. Ninety percent of those persons who commute to Trinity Assembly travel along the Baltimore Beltway.

Two other nearby churches border the Baltimore Beltway. As a result of their close proximity, many visitors of the church have had trouble differentiating Trinity Assembly from these other churches. The other nearby churches bordering the beltway are identified by signs constructed alongside the beltway.

Since Trinity Assembly borders on both the Beltway and Joppa Road, and these roads are not in sight of one another, the church petitioned the Zoning Commissioner of Baltimore County for a variance to erect two double-face, non-illuminated signs. The

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PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201



Baltimore County Zoning Plans Advisory Committee reviewed the proposed variance and each of the following Baltimore County departments reported on the matter: (1) Dept. of Traffic Engineering, (2) The Bureau of Engineering, (3) Current Planning and Development (4) The Fire Prevention Bureau all had no comment(s); The Bureau of Environmental Services stated that the proposed signs do not present any health hazards; and (6) The Baltimore County Public Schools Officials stated that the proposed variance has no bearing on the student population. After a hearing in front of the Zoning Commissioner of Baltimore County where there was no opposition present, the Commissioner ordered that the Petition for Variance be granted. In reliance on the Zoning Commissioner's decision, Trinity Assembly expended nearly \$700.00, and erected two double-faced non-illuminated signs which can be described as follows:

- A 4' x 6' sign which indicates the name of the church and the word "exit", in compliance with Section 413.1e(3) of the Baltimore County Zoning Regulations in that it is directional and informational and does not exceed twenty-five square feet which is located at or near the northwest corner of said property (visible from Interstate 695).
- A 3' x 12' sign, indicating the name of the church, in compliance with the purpose set forth in Section 413.1b of said regulations but comprising thirty-six square feet which is located at or near the driveway access to and from Joppa road.

After Trinity Assembly erected their signs, the People's Counsel for Baltimore County (hereinafter referred to as People's Counsel) appealed the granting of the variance to the Board of Appeals for Baltimore County. No one testified on behalf of the appellants at the Board of Appeals Hearing. Based on oral argument of the People's Counsel and a non-announced visit to Trinity Assembly's property, the Board of Appeals decided that the sign on the northwest corner of the subject property (near the Beltway) was "superfluous and unnecessary, creates a traffic hazard, and that the church being a large, imposing structure, requires no further directional or informational message."

#### ARGUMENT

The Board of Appeals' decision should be remanded and/or reversed because of the following notable errors:

- 2 -

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PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel...

Baltimore County Code 1978 Cumulative Supplement, Section 524.1.

The Circuit Court of Baltimore County should reverse the decision of the Baltimore County Board of Appeals because the People's Counsel presented no evidence. Although the Board of Appeals stated that the sign on the northwest corner of the subject property was superfluous and unnecessary and that this sign could create a hazard to the normal traffic flow in the area, the only evidence in the record are the reports from the various agencies that are a part of the Baltimore County Zoning Plans Advisory Committee. Five agencies from Baltimore County stated that the proposed variance does not present any health hazard.

#### CONCLUSION

The entire decision of the Board of Appeals should be reversed and/or at least remanded because of the many noted errors of substance and procedure that the Board of Appeals used as their basis for decision.

Trinity Assembly has fifteen acres of land with 1500 people attending the church each week. Because the church allows other organizations the use of the church's facilities each week hundreds of newcomers are looking for the church each week. To have one 30 square foot sign on 15 acres of land is a practical difficulty or unreasonable hardship that Trinity Assembly has established. See B.C.Z.R. Section 307 - Variances. The opposition has presented no evidence that the requested variance would cause substantial injury to the public health, safety, and general welfare. The Board of Appeals decision in this matter ought to be reversed and the decision of the Zoning Commissioner should be reinstated.

S. Ronald Ellison

Alan F.M. Garten  
FEDDER AND GARTEN P.A.  
2300 Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201  
(301) 339-2800

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

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#### MISTAKE AS TO THE PARTY HAVING THE BURDEN OF PROOF

Appendix C of the Rules of Practice and Procedure of County Board of Appeals states in Rule 7d:

Except as may otherwise be provided by statute or regulation, the proponent of action to be taken by the Board shall have the burden of proof.

Since Trinity Assembly was granted the variance by the Zoning Commissioner, and it was the People's Counsel who brought this matter before the Board of Appeals for reversal, the People's Counsel was the proponent of the action before the Board of Appeals.

On page three of the transcript before the Board of Appeals, line three, the Chairman of the Board of Appeals mistakenly states:

THE CHAIRMAN: Okay, Mr. Baldwin (Pastor of Trinity Assembly), you being the Petitioner, the burden is on you to convince us that we should grant this variance.

On page eight of the transcripts, line 18, the Chairman again mistakenly implies that Trinity Assembly has the burden of proof when the Chairman asks Pastor Baldwin to go first in making final argument.

Both of these statements indicate a serious error of law on the part of the County Board of Appeals because the Board had mistakenly shifted the burden of proving that the Zoning Commissioner was correct in his decision on to the appellee, Trinity Assembly.

#### MISTAKE AS TO THE ZONING REGULATIONS THAT APPLY TO THE REQUESTED VARIANCE

The Baltimore County Board of Appeals was in error in basing its decision on the mistaken assumption that the proposed variance involved 30 square feet. In reality the proposed variance only involved five square feet. The Board of Appeals incorrectly interpreted Baltimore County Zoning Regulation Section 413.1.

In pertinent part Baltimore County Zoning Regulation Section 413.1 provides as follows:

#### Section 413 - SIGNS

413.1 - The following signs are permitted in any zone, as limited in Section 413.3; if illuminated they shall be of an enclosed lamp design, non-flashing, containing no colored

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 1982, I hand-delivered a copy of the foregoing Memorandum in Support of Petition for Appeal to Peter Max Zimmerman at the People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204.

Alan F.M. Garten  
Alan F.M. Garten

RECEIVED  
BALTIMORE COUNTY  
JUN 3 11 51 AM '82  
COUNTY BOARD  
OF APPEALS  
BY: [initials]

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

- 7 -

illumination, and may also be of the reflector type:

b. One bulletin board on church, school, or college property, not over 30 square feet in area;

e. Directional or information signs of a public or quasi-public nature, not exceeding 15 square feet in area. Such signs shall contain no advertising matter, and shall not be illuminated, but may be of the beading reflector type. They may state:

(3) Signs - directional, informational, or warning in character, involving no advertising aspect, and each not exceeding 25 square feet in area.

Trinity Assembly erected there two signs pursuant to Sections 413.1b, and 413.1e(3). In the Opinion handed down by the Board of Appeals the Board assumed that only Section 413.1b, applied to this proposed variance. The mistaken assumption is evident in the first paragraph of the Board's opinion where they state that Trinity Assembly is seeking a variance for two signs with a total square footage of 60 square feet in lieu of the permitted 30 square feet.

The Zoning Commissioner of Baltimore County applied the zoning regulations correctly when he approved Trinity Assembly's requested when he approved Trinity Assembly's requested variance pursuant to B.C.Z.R. Sections 413.1b, and 413.1e(3). If the Baltimore County Zoning Regulations had been correctly construed the Board would have realized that the proposed variance only involved an additional 5 square feet of sign area.

#### VISIT TO THE SITE

The Board of Appeals unannounced visit to the Church was a denial of Trinity Assembly's right to due process protected under the 14th Amendment to the United States Constitution and the Maryland Constitution Declaration of Rights Article 24. Trinity Assembly was not present at the time of the Board of Appeals visit and hence Trinity Assembly was not allowed to offer evidence as to the need for the request variance along the Beltway border. If representatives from Trinity Assembly were present at the time of the visit by the Board of Appeals to the subject property, then these representatives would have given more evidence of the practical difficulty or unreasonable hardship of not having the proposed signs.

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PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

- 4 -

TRINITY ASSEMBLY OF GOD : IN THE CIRCUIT COURT  
Appellant : FOR BALTIMORE COUNTY  
v. : AT LAW  
BALTIMORE COUNTY BOARD : Misc. No. 7562  
OF APPEALS :  
Appellee :  
: : : : :  
: : : : :

#### REPLY MEMORANDUM

The People's Counsel for Baltimore County, in reply to the memorandum of Appellant, states:

I. The Board of Appeals hearing was de novo, and the Petitioner had the burden of proof.

BZCR Section 501.6 provides,

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence."

In Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970), the Court commented on the de novo character of the appeal,

"The original nature of a de novo hearing with its quality of newness is in contradistinction to a review upon the record as exists where matters are heard on certiorari," 265 A.2d, at 229.

As is typical in de novo appeals, the burden of proof remains with the original proponent of action to be taken, the original petitioner. Accordingly, the Board of Appeals' consistent practice and interpretation in appeals from the Zoning Commissioner has correctly been to place the burden of proof upon the Petitioner. To rule otherwise would make a de novo hearing practically impossible.

II. The Board of Appeals applied the appropriate zoning regulations.

BCZR Section 413.1(b) explicitly restricts churches to one bulletin board "not over thirty square feet in area." Petitioner, in its petition filed with the Zoning Commissioner

#### DENIAL OF EQUAL PROTECTION

By denying Trinity Assembly the requested variance the Board of Appeals is violating the churches right to equal protection under the 14th Amendment to the United States Constitution. Many of the neighboring churches to Trinity Assembly have signs which are not within the Baltimore County Zoning Regulations on Signs. Many of the neighboring churches have placed directional signs on the Baltimore Beltway. The Baltimore County Board of Appeals did not comment on the placement of these neighboring signs that are located on I-695. However the Board found that Trinity Assembly's 24 square foot sign did create a hazard to the normal traffic flow in the area. Being a State agency the Board of Appeals is denying Trinity Assembly equal protection and enforcement of the law as is evidenced by the Board's mandate to remove the 24 square foot sign on the Baltimore Beltway. Baltimore County, through the Board of Appeals or any other enforcement authorities, is not asking any other neighboring church to remove the directional signs off the Beltway due to traffic hazards.

#### STANDARD OF REVIEW

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md.App. 487, 368 A.2d 1067 (1977). A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion. Commissioner, supra.

At the hearing before the Zoning Commissioner of Baltimore County and the Baltimore County Board of Appeals, no one testified in opposition to Trinity Assembly's Petition for a Variance. The People's Counsel for Baltimore County arguments before the Board of Appeals were not evidence. They were merely arguments unsupported by any evidence. The Baltimore County Code clearly enumerates the powers of the People's Counsel before the Board of Appeals.

He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to

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FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

- 2 -

specifically requested, "a Variance from Section 413.1b to permit two double-face non-illuminated signs for a church in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet."

There was no mistake about the proposed variance. The petition filed with the Board, in accordance with the clear language and consistent application of the regulations, required the variance for a total square footage of sixty square feet instead of thirty. The Zoning Commissioner granted the variance in these precise terms. The Board of Appeals then reversed. Petitioner never challenged the point that thirty square feet is the limitation in the absence of a variance.

Of course, to the extent that a specific sign is also governed by BCZR 413.1(e)(3), it must meet the 25 square foot area limitation for directional, informational, or warning signs of a public or quasi-public nature. But this restriction is in addition to, and not in substitution for, the church sign restriction of BCZR Section 413.1(b).

Contrary to Petitioner's contention, the Zoning Commissioner in the concluding paragraph of his Order, stated the issue in terms of a variance for sixty square feet in lieu of the permitted thirty. The Petitioner's argument here is frivolous.

III. There was no reversible error in the Board's visit to the site.

The evidence presented by the Petitioner at the Board of Appeals was so bare that a variance could not possibly be granted under the applicable legal standard. McLean v. Saley, 270 Md. 208 (1973). In an apparent effort to assist the Petitioner, the Board took the reasonable step of visiting the site.

Now, for the first time in its memorandum, Trinity complains not that the Board made the visit, but rather its representatives were not present "to give more evidence of the practical difficulty or unreasonable hardship." The short answer to this contention is that Trinity had its opportunity to present all relevant evidence at the hearing before the Board of Appeals. The evidence it presented was inadequate, and the petition had to be denied with or without the visit. Indeed, if any rights were violated by the visit, it would be the rights of the Appellee.







# 80 258-1 195 PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Trinity Assembly of God, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 13.1b to permit two double-face non-illuminated signs for a church in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet S.A.R. 9/10.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. Large size of site (15.07 acres) requires two signs.
2. Exact location of site confusing from Beltway.
3. Large size sign commensurate to large building for aesthetic value.
4. Location of sign away from road for sight purposes.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

Contract purchaser: EARL D. BALDWIN  
Legal Owner: EARL D. BALDWIN  
Address: 2122 W. JOPPA RD.  
LUTHERVILLE, MD. 21093  
Petitioner's Attorney: 821-673  
276-2757 Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 8th day

of May 1980 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 17th day of June 1980 at 1:30 o'clock P.M.

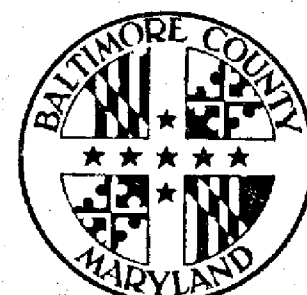
John L. Wimbley  
Zoning Commissioner of Baltimore County.

(over)

## BALTIMORE COUNTY

## ZONING PLANS

## ADVISORY COMMITTEE



## PETITION AND SITE PLAN

## EVALUATION COMMENTS

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

June 6, 1980

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

Chairman  
Nicholas B. Commodari

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Reverend Earl D. Baldwin  
2122 West Joppa Road  
Lutherville, Maryland 21093

RE: Item No. 195  
Petitioner - Trinity Assembly of God  
Variance Petition

Dear Reverend Baldwin:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Because of your proposal to construct an additional sign on this site along Joppa Road and thereby have two signs with a total area of 60 square feet, this Variance is required.

Enclosed are all comments submitted to this office from the committee members at this time. The remaining members felt that no comment was warranted. This petition was accepted for filing on the date of the enclosed certificate and a hearing scheduled accordingly.

Very truly yours,

NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:hk

Enclosures



BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.  
DIRECTOR

April 25, 1980

Mr. William E. Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #195 (1979-1980)  
Property Owner: Trinity Assembly of God  
W/E corner Joppa Rd. and I-695  
Existing Zoning: DR 1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07 District: 8th

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements are not directly involved and are secured by Public Works Agreement #87805, executed in conjunction with Project #7233, "Trinity Assembly of God Church".

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 195 (1979-1980).

Very truly yours,

ELLSWORTH M. DYER, P.E.  
Chief, Bureau of Engineering

END:EAM:FWR:ss

cc: R. Covahey

S-SS Key Sheet  
43 & 44 NE 8 & 9 Pos. Sheets  
NE 11 B and C Topo  
60 and 69 Tax Maps



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
474-3211

JOHN D. SEYFFERT  
DIRECTOR

May 9, 1980

Mr. William Hammond, Zoning Commissioner  
Zoning Advisory Committee  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #195, Zoning Advisory Committee Meeting, April 8, 1980, are as follows:

Property Owner: Trinity Assembly of God  
Location: NE/C Joppa Road and I-795  
Existing Zoning: D.R.1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07  
District: 8th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This plan has been reviewed and there are no site-planning factors requiring comment.

Very truly yours,

John L. Wimbley  
John L. Wimbley  
Planner III  
Current Planning and Development



baltimore county  
department of traffic engineering  
TOWSON, MARYLAND 21204  
(301) 494-3550

STEPHEN E. COLLINS  
DIRECTOR

May 6, 1980

Mr. William Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

The Department of Traffic Engineering has no comments on items No. 188, 191, 194, 195 and 196 with regard to the Zoning Advisory Committee Meeting of April 8, 1980.

Very truly yours,

Michael S. Flanagan  
Engineer Associate II

MSF/bza



BALTIMORE COUNTY  
DEPARTMENT OF HEALTH  
TOWSON, MARYLAND 21204

DONALD J. ROOP, M.D., M.P.H.  
DEPUTY STATE & COUNTY HEALTH OFFICER

May 9, 1980

Mr. William R. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #195, Zoning Advisory Committee Meeting of April 8, 1980, are as follows:

Property Owner: Trinity Assembly of God  
Location: NE/C Joppa Rd. & I-695  
Existing Zoning: D.B. 1  
Proposed Zoning: Variance to permit 2 signs for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.  
Acres: 15.07  
District: 8th

The proposed signs should not present any health hazards.

Very truly yours,

Ian J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

IJP/lth



BALTIMORE COUNTY  
FIRE DEPARTMENT  
TOWSON, MARYLAND 21204  
825-7310

PAUL H. REINCKE  
CHIEF

May 13, 1980

Mr. William Hammond  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Nick Commodari, Chairman  
Zoning Plans Advisory Committee

Re: Property Owner: Trinity Assembly of God

Location: NE/C Joppa Road & I-695

Item No: 195 Zoning Agenda: Meeting of April 8, 1980

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.

( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved as drawn.

(X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: P.H. Reincke, Chief, Fire Prevention Bureau  
Noted and Approved: [Signature]  
Planning Group  
Special Inspection Division



2.


*June Holmen*  
June Holmen  
County Board of Appeals of Baltimore County

CERTIFIED COPIES OF PROCEEDINGS BEFORE  
THE ZONING COMMISSIONER AND THE  
BOARD OF APPEALS OF BALTIMORE COUNTY

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER  
OF BALTIMORE COUNTY

2.

*June Holmen*  
June Holmen  
County Board of Appeals of Baltimore County

  
John W. Hessian, III

PETITION ON APPEAL

5. That the Zoning Commissioner of Baltimore County on the

John W. Hession, III

-2-

Peter Max Zimmerman



PEOPLE'S COUNSEL FOR BALTIMORE COUNTY  
Petitioner  
v.  
TRINITY ASSEMBLY OF GOD,  
Respondent

IN THE COURT OF APPEALS  
OF MARYLAND  
September Term, 1983  
Petition No. 80-258-A

PETITION FOR WRIT OF CERTIORARI TO  
THE COURT OF SPECIAL APPEALS OF MARYLAND

People's Counsel for Baltimore County, Petitioner, pursuant to Maryland Rules 813-11, requests this Court to issue a writ of certiorari to the Court of Special Appeals, as follows:

(a) The instant case was docketed in the Circuit Court for Baltimore County as Trinity Assembly of God v. Baltimore County Board of Appeals, Miscellaneous No. 7662.

(b) The case was decided by the Court of Special Appeals, and its per curiam opinion in No. 1250, September Term, 1982, filed May 2, 1983, is appended hereto as Exhibit A.

(c) The judgment of the Circuit Court for Baltimore County was dated August 16, 1982. That Court's Opinion is appended as Exhibit B. The Mandate of the Court of Special Appeals affirmed the lower Court judgment and reversed that of the administrative agency. The County Board of Appeals' Opinion is appended as Exhibit C.

(d) The questions presented for review are:

1. Whether it is a reasonable exercise of the police power for a local zoning board to deny a sign variance requested for the benefit of interstate visitors which would proliferate signs along the Baltimore Beltway in a residential area?

Rec'd 6-14-83  
11:30 am  
6-14-83  
JLL

- 3 -

(hereinafter "BCZR") 501.6; Baltimore County Charter Sec. 603; see Dahl v. County Board of Appeals, 258 Md. 157 (1970). The hearing was brief; the testimony occupied six pages of an eleven-page transcript.

The Pastor, the only witness, claimed that because of the Joppa Road overpass, beltway drivers would tend not to see the church and miss the proper beltway exit. He neither described the character of the neighborhood, nor made any suggestion that the church was hard to locate from Joppa or other local roads. There was no evidence as to traffic safety or aesthetics.

The People's Counsel opposed the variance because there appeared no hardship or practical difficulty for the church to give its congregants proper directions, and because it would set a precedent for the proliferation of free-standing signs along the beltway.

The Board proceeded on its own to visit the site. It then issued its opinion denying the variance because the large, imposing structure required no further directional message, and the small sign could create a traffic hazard.

The Circuit Court reversed, concentrating on the point that the only witness was the Pastor. The Court of Special Appeals majority picked up on this and said (page 5):

"Although appellee agrees with the scope of review and the standard to be applied, it points out that zoning decisions, nevertheless, must be based on evidence. Mayor and City Council of Rockville v. Cotler, 230 Md. 335 (1963) of which there was none in this case other than that provided by Trinity. The only response in the record to Trinity's evidence is argument by Counsel, and it is to this fact that the Circuit Court in its truncated opinion and order referred."

The majority also agreed with Trinity that the Board's visit to the site was improper, and that evidence should not have been considered. Then, purporting to apply all of the

- 5 -

similarly approved the use of the police power for "...the elimination of signs or pennants which distracted motorists..." and "to preserve an area which is generally regarded by the public to be pleasing to the eye..." City of Baltimore v. Mano Swartz, 268 Md. 79, 87, 90 (1973), citing, *inter alia*, Grant v. City of Baltimore, 212 Md. 301, 316-19 (1957) (restriction of billboards in residential areas). Here, the Board acted both to prevent a perceptible hazard and stem what may be a tide of signs threatening to multiply along the beltway in pleasing residential areas.

Moreover, it rejected the incredible claim that a church suffers from hardship or practical difficulty because it is not readily visible from an interstate highway. In this context, it understood implicitly that the requested variance to benefit Washingtonians and the like is for the "personal convenience" of the church and not associated with the property. Camey v. City of Baltimore, 201 Md. 130 (1952).

While there are a number of Court of Appeals opinions reviewing the broad limits of the local power to regulate signs, there is a lack of guidance on the handling of sign variances in concrete fact situations. It would be in the public interest for the Court to take this case as an opportunity to fill that void.

II. Burden of Proof; Burden of Persuasion

The Court of Special Appeals divided over the analysis of the burden of persuasion in an adjudicatory hearing. We share Judge Moylan's view that the majority took away from the Board its function to judge the persuasiveness of the evidence in light of the applicable legal principles.

It is apparent that the People's Counsel was penalized for its failure to produce its own testimony. This was inappropriate and unfair, because the thrust of the opposition

- 7 -

Here, the Board's unannounced site visit is well within the bounds of fairness. One of the purposes of the administrative law system is to utilize expertise, and this was a neutral act involving merely the observation of real estate. Neither party necessarily stood to gain or lose. The aim apparently was to better inform the Board in a practical way, without a full-scale trial at the viewing.

Research has disclosed no case law in point. See Davis, *op. cit.*, Chapter 16. It would, therefore, be appropriate for the Court of Appeals to clarify an important question arising in the conduct of zoning cases.

It would also be appropriate to clarify whether the admission of such evidence, even if erroneous, can be reversible error. Davis suggests that the nature of administrative law is such that it cannot, under federal law. Davis, *op. cit.*, Sec. 16.12; Public Utilities Commission v. Pollak, 343 U.S. 451 (1952). We know of no Maryland authority.

IV. The Remand Issue

In O'Donnell v. Basler, 289 Md. 501, 509 (1981), it was held that the reviewing court should ordinarily remand when it finds an error of law committed by the administrative agency. There, the question was the ability of the court to delete conditions erroneously attached to a zoning special exception. Here, the question is the ability of the court to decide the case after excluding the evidence produced by the site visit.

We suggest that the appropriate remedy for the evidentiary problem (assuming error) would be to remand to provide an opportunity for an announced site visit. All parties would then have an opportunity fairly to participate in the visit. Trinity's main complaint has been its lack of opportunity so to participate, and this would then be satisfied.

At the same time, the principle respecting the judgment and expertise of the agency may be maintained. Again, we know of no case on point.

7

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

In the  
Court of Appeals  
of Maryland

v.

TRINITY ASSEMBLY OF GOD

Petition Docket No. 229

September Term, 1983

(No. 1250, September Term, 1982  
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of and the answer filed thereto, Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy  
Chief Judge

Date: September 14, 1983.

Rec'd 9-19-83  
12:45 PM

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1250

September Term, 1982

80-258-A

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

TRINITY ASSEMBLY OF GOD

Moylan  
Bishop  
Garrity,

JJ.

OPINION BY BISHOP, J.  
DISSENTING OPINION BY MOYLAN, J.

Filed: May 2, 1983

Rec'd 5-3-83  
1:15 PM

PER CURIAM

People's Counsel of Baltimore County (Counsel) appeals a ruling of the Circuit Court for Baltimore County reversing the action of the Board of Appeals of Baltimore County (the Board), which reversed the Zoning Commissioner's grant of a Petition for Zoning Variance filed by the appellee, Trinity Assembly of God (Trinity).

Trinity's petition requested a variance from Section 413.1 b of the Zoning Regulations of Baltimore County, which permitted "[o]ne bulletin board on church, school, or college property, not over 30 square feet in area." In lieu of the permitted sign, Trinity requested permission to erect two double-face, non-illuminated signs with a total of sixty square feet. Trinity listed four reasons on the petition as the basis for hardship or practical difficulty caused by its compliance with the existing regulation:

1. Large size of site (15.07 acres) requires two signs.
2. Exact location of site confusing from Beltway.
3. Large size sign commensurate to large building for aesthetic value.
4. Location of sign away from road for sight purposes."

The Board affirmed the Zoning Commissioner's authorization of the increase from 30-36 square feet of the sign located at the entrance on Joppa Road, but denied

- 3 -

5. That the church building now containing 18,000 square feet, will be expanded to 24,000 square feet, and that compared to the proposed size of the church, the signs are small.

The scope of judicial review both as it applies to the Circuit Court in the appeal from the Board, and to this Court in the appeal from the circuit court is that if there was sufficient evidence to make the issue fairly debatable, then the decision of the Board must be affirmed. We are bound by this limitation even though we might well have arrived at a different conclusion from that of the Board. McLean v. Soley, 270 Md. 208, 215-16 (1973).

Section 307 of the Baltimore County Zoning Regulation authorizes the Zoning Commissioner and the County Board of Appeals, upon appeal, to grant variances from sign regulations "... only in such cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." (Emphasis supplied).

In Anderson v. Board of Appeals, 22 Md. App. 28, 40 (1974) we explained the meaning of a regulation such as Section 307:

"While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the 'practical difficulty' standard to area variance applications in only three cases. McLean v. Soley, *supra*, 270 Md. at 213-14, 310 A.2d at 786-87; Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646, 656 (1971); Loyola



2. Whether a zoning board is required to be persuaded by evidence of a petitioner where the petitioner chooses not to produce evidence but rather simply to challenge the persuasiveness of the petitioner's presentation.

3. Whether a zoning board may make an unannounced site visit to supplement its review of the testimony, and whether the use of such evidence can constitute reversible error?

4. Whether, upon a finding that the zoning board was wrong to consider evidence produced by an unannounced site visit, the Court should remand the case to the Board for further consideration, including possibly an announced visit, and whether the failure to do so was a usurpation of the administration function.

(e) The applicable provisions of the Baltimore County Zoning Regulations are appended hereto as Exhibit D.

(f) Statement of Facts in Support of Petition.

In a *de novo* hearing, the County Board of Appeals for Baltimore County ("the Board") denied a sign variance which Respondent Trinity Assembly of God ("Trinity") wanted along the Baltimore Beltway for the benefit of visitors from Washington and other areas.

The property is in Brooklandville, a residential area, on the north side of Joppa Road, bordering the beltway to the east. The entrance is on Joppa, with a sign there. It is the second sign, toward the rear of the west boundary, which is in controversy.

As is the rule, at these *de novo* zoning administrative hearings, the burden of proof is on the property owner requesting approval. Baltimore County Zoning Regulations

criteria set forth in *McLean v. Soley*, 270 Md. 208 (1973), the appellate court held that "reasoning minds could not reach the conclusion reached by the Board." (page 7)

Judge Moylan dissented. He summarized his views at page 4:

"In my judgment, there was a genuine issue of persuasion for the fact-finding Board here. Without any obligation upon the opponent to do anything but hope, the Board on the evidence in this case could well have said to the proponent:

'We believe your witnesses fully. We conclude that every fact you have urged upon us is true. We have heard nothing to the contrary. Nonetheless, we are not persuaded that your evidence adds up to a compelling case for the relief sought. Yours is the risk of non-persuasion and we are unpersuaded.'

I read the majority opinion to say, in effect, that whenever an opponent fails to put on an affirmative defense, the production by a proponent of that barely minimal, *prima facie* case that generates fair debate instantaneously becomes so compelling as to preclude fair debate. There would be in such circumstances no additional burden of persuasion beyond the burden of production; there would rather be placed upon the opponent an affirmative burden of dissuasion. This is not my understanding of the law."

(g) Argument in Support of Petition.

I. The Police Power

The Court of Special Appeals has overlooked the fundamental nature of zoning regulations directed to signs. These are to further traffic safety and the appearance of the community. *Metromedia, Inc. v. City of San Diego* (1981), citing *Railway Express Agency, Inc. v. New York*, 336 U.S. 106 (1949) and *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The Court of Appeals has in sign cases

was to the concept of the variance and addressed to the judgment or discretion of the board in applying the law to the facts. Otherwise stated, the People's Counsel challenged the quality of the evidence - its legal sufficiency, its weight, and its credibility.

Judge Moylan argued by analogy from judicial procedure - the use of directed verdicts, the ability of judges and juries to decide upon the weight of evidence - to show that the majority had confused the burden of production with the burden of persuasion. A review of 3 Davis, *Administrative Law Treatise* (2d Ed. 1980) Sec. 16:9 discloses no apparent cases where the issue has come up in this way. Davis does reiterate the prevailing rule that the burden of persuasion is on the applicant or the regulated person.

It would be in the public interest for this Court to clarify the procedural framework in the usual administrative adjudicatory hearing. We need a better understanding of the burden of persuasion and the appropriateness of drawing from judicial procedure (directed verdicts, etc.). Administrative board members ought to know whether they can reject an application simply because the evidence is not persuasive. They ought to know also whether they have the flexibility to grant, in effect, a directed verdict. These are important questions of first impression which have divided the Court of Special Appeals panel here.

III. The Unannounced Site Visit; Reversible Error

As it was put in *Montgomery County v. National Capital Realty Corporation*, 267 Md. 364, 376 (1972), "...administrative agencies are not generally bound by technical common law rules of evidence, although they must observe the basic rules of fairness as to parties appearing before them..." See also *Maryland Fire Underwriters Rating Bureau v. Insurance Commissioner*, 260 Md. 258 (1971), *Dal Maso v. Board of County Commissioners for Prince George's County*, 238 Md. 333 (1965), *Katz v. Insurance Commission*, 53 Md. App. 420 (1983).

Respectfully submitted,

*John W. Hession, III*  
John W. Hession, III  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 223, Court House  
Towson, Maryland 21204  
494-2188

that part of the requested variance which would have permitted the erection of an additional sign on the northwest corner of the property, visible from the Baltimore County Beltway, Interstate 695.

Counsel contends that the Board of Appeals' decision to deny that part of the petition requesting a sign visible from Interstate 695 was based on substantial evidence of the failure of Trinity to meet the required legal standard of practical difficulty or unreasonable hardship and that the Circuit Court, by substituting its judgment for that of the Board, consequently exceeded the proper scope of judicial review.

The only witness to testify before the Board of Appeals was Earl D. Baldwin, Pastor of Trinity Assembly of God Church. His testimony supported the following facts:

1. That the church is located on a 15 acre tract of land bordering on Interstate 695, the Baltimore County Beltway and Joppa Road, a county secondary road;
2. That some persons wishing to attend the church have had great difficulty locating the church from the Beltway;
3. That because the Beltway underpasses Joppa Road the tendency is for persons to drive under Joppa Road without seeing the church and thus miss the proper exit;
4. That based on the Zoning Commissioner's approval a sign of 24 square feet was erected on the Beltway border, and a sign of 36 square feet was erected on the Joppa Road border--a total of 60 square feet;

*Loan Ass'n v. Buschman*, supra, 227 Md. at 248-50, 176 A. 2d at 358-59. In each of them the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of 'practical difficulty' alone and that proof of 'hardship' was not required because the governing zoning ordinance, which phrased the criteria of 'practical difficulty or unreasonable hardship' in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied."

In *McLean v. Soley*, supra, at 214 the Court set forth the standard of "practical difficulty" in a quote from 2 Rathkopf, *The Law of Zoning and Planning*, (3d ed. 1972) 45-28, 29, which set out the following criteria:

"1) Whether compliance with the strict letter of the restrictions... would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

The above was quoted in the appellant's brief in the following manner:

"In *McLean v. Soley*, 270 Md. 208, 214, 310 A. 2d 783 (1973), the Court of Appeals defined the standard of 'practical difficulty or unreasonable hardship' under BCZR 307:

'1) Whether compliance with the strict letter of the restrictions would unreasonably prevent use of the property for a permitted purpose;

2) Whether substantial justice would be done consistent with interests of other property owners in the neighborhood; and

3) Whether the spirit of the ordinance will be observed and the public safety and welfare secured."

We will assume that the appellant's inaccurate quote set out above was unintentional and certainly not intended to mislead this Court. The above, however, is not the only inaccuracy in appellant's brief. At page 6 in the quoted section from *City of Baltimore v. Mano Swartz*, 268 Md. 79, 90 (1973), there is a deletion of an entire line which leaves the last sentence of the quoted portion to make no sense at all. We strongly recommend that People's Counsel take more care in the future.

Although appellee agrees with the scope of review and the standard to be applied, it points out that zoning decisions, nevertheless, must be based on evidence, *Mayor and City Council of Rockville v. Cotler*, 230 Md. 335 (1963) of which there was none in this case other than that provided by Trinity. The only response in the record to Trinity's evidence is argument by Counsel, and it is

Based on our review of the only evidence presented to the Board and applying all of the criteria set out in *Rathkopf*, supra, via *McLean v. Soley*, supra, we hold that the implicit findings of the Circuit Court that reasoning minds could not reach the conclusion reached by the Board were correct.

JUDGMENT AFFIRMED.  
COSTS TO BE PAID BY  
APPELLANT.



to this fact that the Circuit Court in its truncated opinion and order referred.

Trinity argues that Counsel failed to rebut any of the evidence presented to the Board, and that based on that evidence reasoning minds could not reasonably reach the conclusion reached by the Board. In Comm'r. v. Cason, 34 Md. App. 487, 508 (1977), we said:

"A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact."

We agree with Trinity that the Board's visit to the site without notice to the parties, and after announcing that the record was closed, was improper. Whatever evidence the Board may have gathered as a result of the visit should not be considered and will not be considered by this Court.

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1250

September Term, 1982

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

TRINITY ASSEMBLY OF GOD

Moylan,  
Bishop,  
Garrity,

JJ.

Dissenting Opinion by Moylan, J.

Filed: May 2, 1983

Respectfully, I dissent. The single issue before us is whether there was a fairly debatable issue before the Board of Appeals of Baltimore County. If there was, the Circuit Court for Baltimore County should have affirmed the decision of the Board.

I agree fully with the statement of law as to the standard of review set forth in the majority opinion:

"The scope of judicial review both as it applies to the Circuit Court in the appeal from the Board, and to this Court in the appeal from the circuit court is that if there was sufficient evidence to make the issue fairly debatable, then the decision of the Board must be affirmed. We are bound by this limitation even though we might well have arrived at a different conclusion from that of the Board. McLean v. Soley, 270 Md. 208, 215-16 (1973)."

In applying that standard, the majority reaches the conclusion that there was no fairly debatable issue simply from the fact that the original petitioner presented evidence before the Board and that People's Counsel for Baltimore County presented none. Such an evidentiary posture is not to my mind dispositive of whether there was a fairly debatable issue.

To my mind, the majority opinion fails to distinguish between the burden in this regard placed upon a proponent and the significantly lesser burden placed upon an opponent. As the moving party, the proponent has allocated to it both the burden of production and the burden of ultimate persuasion. The generation of a fairly debatable issue is neither more nor less than the presentation of a prima facie case. The question is whether the proponent has produced a legally sufficient case to permit (not compel) the fact

Though the zoning law, in its strange way, insists upon using a separate language to describe the same thing, this, to my mind, is all that the notion of a fairly debatable issue connotes.

To say, in the context of zoning law, that there is a fairly debatable issue, is to say that there is a genuine question of fact before the fact-finding body and that it, in its wide discretion, can find in either direction and not be wrong, as a matter of law. To say, on the other hand, that there is no fairly debatable issue, is to say, in effect, that a directed verdict should have been rendered, as a matter of law. Before a reviewing court can assess whether a directed verdict was called for or not, it must determine the direction in which the verdict is being directed. It is easy for a proponent on an issue to suffer an adverse directed verdict, for the proponent bears the burden of production. It is far more difficult for a mere opponent to suffer an adverse directed verdict, however, for the opponent bears no burden of either production or persuasion. The opponent has no legal obligation to do anything. The opponent may simply rely upon the inadequacy of the proponent's case.

For the proponent's case to be adequate to permit consideration by the fact finder by no means implies that the proponent's case is so adequate as to foreclose consideration by the fact finder. Avoiding a directed verdict against one is not, ipso facto, an entitlement to a directed verdict in one's favor. In between lies that broad intermediate zone known as fact finding (in the parochial language of zoning, the world of fair debate) where the fact finder

494-31C3

County Board of Appeals

Room 219, Court House  
TOWSON, MARYLAND 21204

October 22, 1982

Mr. Julius A. Romano  
Clerk of the Court of Special Appeals of Maryland  
Annapolis, Maryland 21404

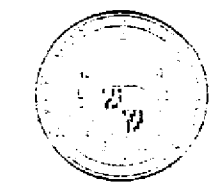
Re: Case No. 1250 September Term 1982  
Trinity Assembly of God

Dear Mr. Romano:

Please forward to this office a copy of the opinion in the above entitled case when it is filed by the Court of Special Appeals. We would appreciate it if you would note our request in your file on this case. Thank you.

Very truly yours,

*Edith T. Eisenhart*  
Edith T. Eisenhart, Adm. Secretary



HOWARD E. FRIEDMAN  
CLERK

1250

September Term, 1982

People's Counsel for  
Baltimore County

John W. Hessian, III, Esquire  
Peter Max Zimmerman, Esquire

Attorneys for Appellant

Trinity Assembly of God

S. Ronald Ellison, Esquire  
Alan F. M. Garten, Esquire

Attorneys for Appellee

The Record in the captioned appeal was received and docketed on October 20, 1982.

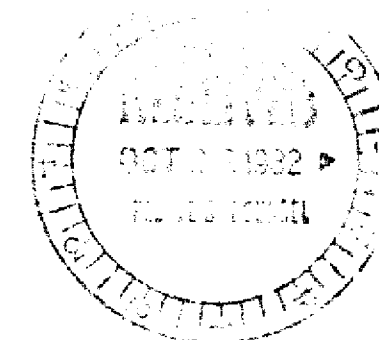
The brief of the APPELLANT is to be filed with the office of the Clerk on or before November 29, 1982.

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of the appellant brief (Rule 1030a2).

This appeal is to be argued before this Court during the week of April 11, 12, 13, 14, 15, 18, 19, & 20, 1983.

Stipulations as to the time within which to file briefs will not be granted where the appellant delays argument (Rule 1030(c)).

Counsel is advised to advise the office of the Clerk (Pursuant to Rule 1047 of the Court of Special Appeals) at the time of filing his brief. No submission on behalf of the appellant shall be accepted (10) days prior to the date of argument without the approval of the Court.



HOWARD E. FRIEDMAN  
Clerk of the Court of  
Special Appeals of Maryland



Baltimore County, Maryland

PEOPLE'S COUNSEL  
RM. 223, COURT HOUSE  
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III  
People's Counsel  
PETER MAX ZIMMERMAN  
Deputy People's Counsel

TEL 49-1-2188

December 15, 1981

Ms. Joyce Grimm, Director  
Assignments Office  
Circuit Court for Baltimore County  
Courts Building  
Towson, Maryland 21204

RE: Trinity Assembly of God, Petitioner/Appellant  
Circuit Court Misc. Law Case #7662

Dear Ms. Grimm:

The above matter is presently set in for Friday, January 8, 1982, at 9:30 am.

Unfortunately, the United States Court of Appeals in Richmond has scheduled oral argument for that day on a matter in which I am involved.

Since I am handling the Trinity Assembly of God case, I must respectfully request a postponement.

Very truly yours,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel

cc: Alan Garten, Esquire  
Feddor & Garten  
36 S. Charles Street  
Baltimore, MD 21201

PMZ:sh

RECEIVED  
BALTIMORE COUNTY  
JAN 21 1982  
JAN 21 1982

494-3180

County Board of Appeals

Room 219, Court House  
Towson, Maryland 21204

September 1, 1981

John W. Hessian, Esq.  
People's Counsel  
Court House  
Towson, Md. 21204

Dear Mr. Hessian:

Re: Case No. 80-258-A  
Trinity Assembly of God

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.

cc: Mr. Earl D. Baldwin  
J. E. Dyer  
W. Hammond  
J. Hoswell  
N. Gerber



finder (in this case, the Board of Appeals) to be persuaded. In the present case, the petitioner-appellee clearly did present a prima facie, legally sufficient case. In the language of zoning law, it generated a fairly debatable issue.

To have met the production burden, however, is not the same as to meet the burden of persuasion. There is still allocated to the petitioner the obligation to persuade the fact finder to find for the petitioner. A case sufficient to permit a finding for the petitioner is not necessarily a case that compels a finding for the petitioner. The fact finder always has the prerogative to be unpersuaded by evidence even if the evidence is uncontradicted.

There is no reciprocal legal obligation upon the opponent of a proposition to carry either a burden of production or a burden of persuasion. The opponent may be tactically well-advised to counter the proponent with countervailing evidence. In the alternative, however, the opponent may simply argue (sometimes successfully) that the proponent's case is not persuasive. In my judgment, the proponent here generated a fairly debatable issue, which would have permitted the fact-finding Board of Appeals to rule in its favor but which would not compel such a ruling. The majority does not suggest that the uncontradicted case for the petitioner was so compelling, clear and decisive as to permit no conclusion other than a finding in the proponent's favor. As long as the proponent bears the risk of non-persuasion, I see no duty whatsoever upon the opponent to contradict. It is enough to controvert and to hope that the fact finder will be unpersuaded.

may be persuaded or may remain unpersuaded. The risk of non-persuasion is still upon the proponent even after he has mounted a prima facie case. It seems self-evident that the fact finder may be legitimately unpersuaded even where the opponent simply stands pat.

In my judgment, there was a genuine issue of persuasion for the fact-finding Board here. Without any obligation upon the opponent to do anything but hope, the Board on the evidence in this case could well have said to the proponent:

"We believe your witnesses fully. We conclude that every fact you have urged upon us is true. We have heard nothing to the contrary. Nonetheless, we are not persuaded that your evidence adds up to a compelling case for the relief sought. Yours is the risk of non-persuasion and we are unpersuaded."

I read the majority opinion to say, in effect, that wherever an opponent fails to put on an affirmative defense, the production by a proponent of that barely minimal, prima facie case that generates fair debate instantaneously becomes so compelling as to preclude fair debate. There would be in such circumstances no additional burden of persuasion beyond the burden of production; there would rather be placed upon the opponent an affirmative burden of dissuasion. This is not my understanding of the law.

EARL D. BALDWIN, JR.  
TOM McDONALD, MINISTER OF MUSIC  
TOM KNOTT, DIRECTOR OF CHRISTIAN EDUCATION

TRINITY ASSEMBLY OF GOD  
OFFICE OF THE PASTOR

Oct. 1, 1981

Clerk of the Circuit Court of  
Baltimore County  
Towson, MD 21204

Gentlemen:

Please file an appeal from a decision handed down by the County Board of Appeals, No. 80-258-A in reference to the petition for variance concerning the Trinity Assembly of God Church.

Very truly yours,

*Earl D. Baldwin*  
Earl D. Baldwin  
President

EDB:rem

cc: County Board of Appeals

BALTIMORE COUNTY  
OCT 5 10 37 AM '81  
COUNTY BOARD  
OF APPEALS  
BY: \_\_\_\_\_

TELEPHONE  
(410) 821-6573

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204  
October 6, 1981

John W. Hession, III, Esq.  
People's Counsel  
Court House  
Towson, Md. 21204

Dear Mr. Hession:

Re: Case No. 80-258-A  
Trinity Assembly of God

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: J. E. Dyer  
W. Hammond  
J. Hoswell  
N. Gerber

October 6, 1981

BILLED TO: Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Md. 21093

Cost of certified documents filed  
in Case No. 80-258-A . . . . . \$ 13.00

Trinity Assembly of God  
NE/C Joppa Road and I-695  
8th District

MAKE CHECKS PAYABLE TO: Baltimore County, Md.

REMIT TO: No. 85084

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE Oct. 9, 1981 ACCOUNT 01.212

AMOUNT \$13.00

RECEIVED FROM Earl D. Baldwin, Trinity Assembly of God, 2122 W. Joppa Road, Lutherville, Md.  
FOR Case No. 80-258-A  
Trinity Assembly of God

010\*\*\*\*\*130018 2095F  
VALIDATION OR SIGNATURE OF CASHIER

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204  
October 6, 1981

Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Md. 21093

Dear Mr. Baldwin:

Re: Case No. 80-258-A  
Trinity Assembly of God

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encls.

494-3180

County Board of Appeals  
Room 219, Court House  
Towson, Maryland 21204

March 18, 1981

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 80-258-A

TRINITY ASSEMBLY OF GOD

NE/C of Joppa Rd. & I-695

8th District

Variance-Sec. 413.1b, 2 double face non-illuminated signs for a church

8/22/80 - Z.C. (Hammond) GRANTED variance subject to the approval of a site plan

TUESDAY, JUNE 23, 1981, at 11 a.m.

ASSIGNED FOR:

cc: Mr. Earl D. Baldwin

Petitioner

J. W. Hession, Esq.

People's Counsel

J. E. Dyer

Zoning

Wm. Hammond

J. Hoswell

N. Gerber

June Holmen, Secy.

BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

June 5, 1980

Mr. Earl D. Baldwin  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093

RE: Petition for Variance  
NE/C Joppa Road and I-695  
Case No. 80-258-A

Dear Sirs:

This is to advise you that \$53.75 is due for advertising and posting of the above-property.

Please make check payable to Baltimore County, Maryland and remit to Sondra Jones, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

*William E. Hammond*  
WILLIAM E. HAMMOND  
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 088831

DATE June 11, 1981 ACCOUNT 01-662

AMOUNT \$53.75

RECEIVED FROM Trinity Assembly of God  
FOR Advertising and Posting for Case No. 80-258-A

082783112 53.75 net  
VALIDATION OR SIGNATURE OF CASHIER



May 21, 1980

Earl D. Baldwin, Pastor  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093

NOTICE OF HEARING

RE: Petition for Variance - NE/C Joppa Road and I-695  
Case No. 80-258-A

TIME: 1:30 P.M.

DATE: Tuesday, June 17, 1980

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

*William E. Hammond*  
ZONING COMMISSIONER OF  
BALTIMORE COUNTY

PETITION FOR VARIANCE  
8th District  
Trinity Assembly of God  
2122 W. Joppa Road  
Lutherville, Maryland 21093  
DATE: Tuesday, June 17, 1980 at 1:30 P.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland  
The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the following petition for variance to the Zoning Regulations to be held at the following time and place:  
Petition for Variance to permit two double-face non-illuminated signs in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet.  
The Zoning Regulations to be modified as follows:  
Section 413.1b - One bulletin board on church, school, or college property, not over 30 square feet in area.  
All that parcel of land in the Eighth District of Baltimore County  
All that parcel of land (15.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Rd. From a pipe set at the point formed by the intersection of N.E. side of Joppa Rd. & I-695 - East on radius 7514.44' - 1750.24', S62 degrees 14'56" E 239.79', S17 degrees 12'09" W 140.38'; S02 degrees 31'32" E 250.96'; N 75 degrees 22'42" W 265.09'; S41 degrees 46' 39" W 1421.61'; N 47 degrees 57'55" W 158.14'; N 34 degrees 49'53" W 154.03'; N 36 degrees 52'49" W 79.39' to place of beginning.  
Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland  
BY ORDER OF  
WILLIAM E. HAMMOND  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION  
A 1788

Pikesville, Md., May 29, 1980

THIS IS TO CERTIFY, that the annexed advertisement as published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore county, Maryland before the 17th day of June 1980  
the first publication appearing on the 29th day of May 1980  
the second publication appearing on the day of 1980  
the third publication appearing on the day of 1980

THE NORTHWEST STAR

*Phyllis Hedberg*  
Manager

Cost of Advertisement 26.00

Mr. William E. Hammond  
Zoning Commissioner  
Room 109, County Office Building  
Towson, Maryland 21204

RE: Case No. 80-258-A  
Building Permit Application  
No. 30177  
8th Election District

Dear Mr. Hammond:

We, the undersigned, being the owner of the above mentioned property and the applicant for the above referenced building permit, do hereby acknowledge that we are fully aware of your Order being subject to a thirty (30) day appeal period, but wish to go ahead with the construction of improvements on the property prior to the expiration of said appeal period.

We hereby relieve our builder, Baltimore County Maryland and you from any liability or responsibility in this matter and agree to assume any and all financial responsibility for any consequences which might arise during the appeal period if an appeal is filed after construction has begun.

Very truly yours,

*Earl D. Baldwin*  
Trinity Assembly of God

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond  
Zoning Commissioner

Date: June 4, 1980

TO: John D. Seyffert, Director  
Office of Planning and Zoning

FROM: Petition No. 80-258-A Item 195

Petition for Variance for signs  
Northeast corner of Joppa Road and I-695  
Petitioner - Trinity Assembly of God

Eighth District

HEARING: Tuesday, June 17, 1980 (1:30 P.M.)

There are no comprehensive planning factors requiring comment on this petition.

*John D. Seyffert*  
John D. Seyffert, Director  
Office of Planning and Zoning

JDS:JGH:ab

PETITION FOR VARIANCE

8th District

ZONING: Petition for Variance for signs  
LOCATION: Northeast corner of Joppa Road and I-695  
DATE & TIME: Tuesday, June 17, 1980 at 1:30 P.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit two double-face non-illuminated signs in lieu of the permitted one sign with a total square footage of 60 square feet in lieu of the permitted 30 square feet

The Zoning Regulation to be excepted as follows:

Section 413.1b - One bulletin board on church, school, or college property, not over 30 square feet in area

All that parcel of land in the Eighth District of Baltimore County

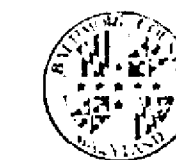
Being the property of Trinity Assembly of God, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF  
WILLIAM E. HAMMOND  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY

All that parcel of land (15.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Rd. From a pipe set at the point formed by the intersection of N.E. side of Joppa Rd. & I-695 - East on radius 7514.44' - 1750.24', S62 degrees 14'56" E 239.79', S17 degrees 12'09" W 140.38'; S02 degrees 31'32" E 250.96'; N 75 degrees 22'42" W 265.09'; S41 degrees 46' 39" W 1421.61'; N 47 degrees 57'55" W 158.14'; N 34 degrees 49'53" W 154.03'; N 36 degrees 52'49" W 79.39' to place of beginning.

Trinity Assembly of God  
2122 W. Joppa Rd.  
Lutherville, Md. 21093



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

August 22, 1980

Reverend Earl D. Baldwin  
2122 West Joppa Road  
Lutherville, Maryland 21093

RE: Petition for Variances  
NE/corner of Joppa Road and Interstate 695 - 8th Election District  
Trinity Assembly of God - Petitioner  
NO. 80-258-A (Item No. 195)

Dear Reverend Baldwin:

I have this date passed my Order in the above referenced matter in accordance with the attached.

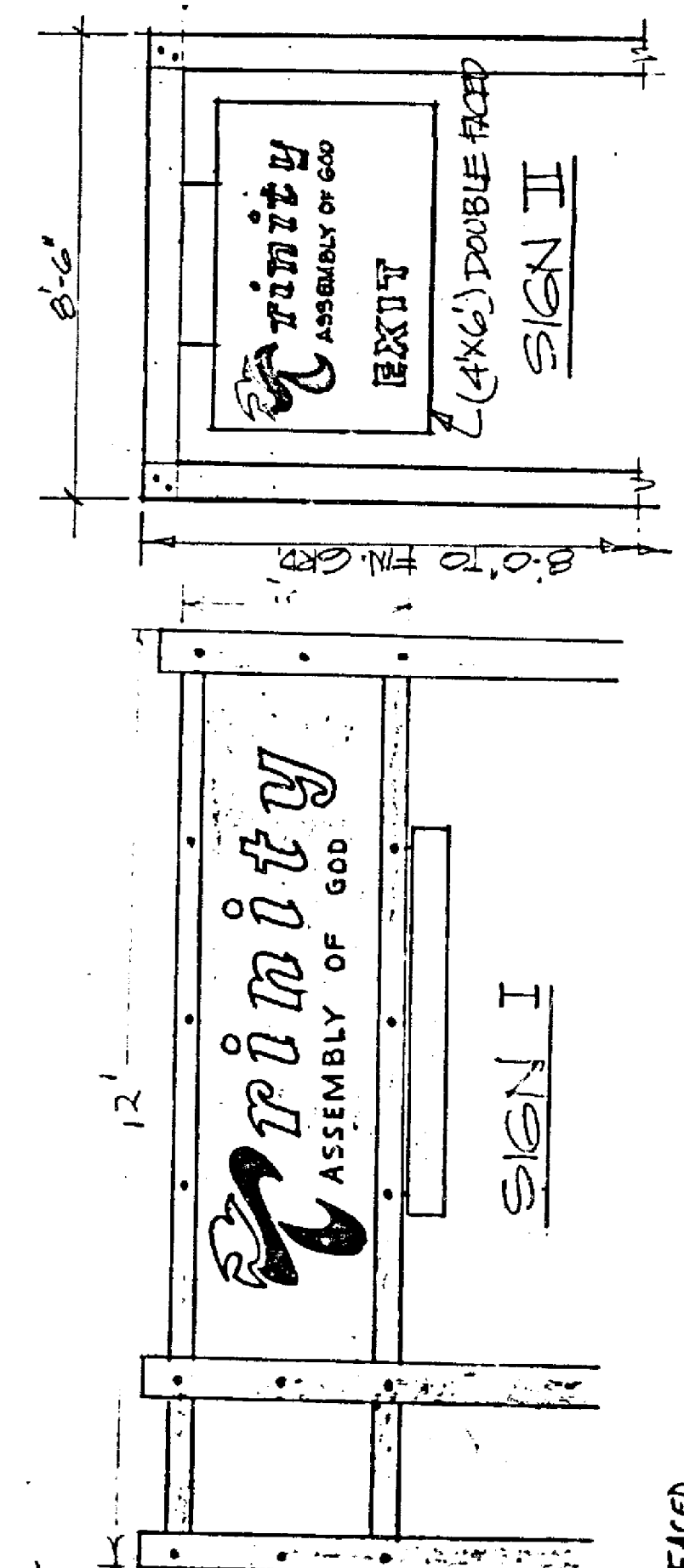
Very truly yours,

*William E. Hammond*  
WILLIAM E. HAMMOND  
Zoning Commissioner

WEH/srl

Attachments

cc: John W. Hessian, III, Esquire  
People's Counsel



*John D. Seyffert*  
John D. Seyffert, Director  
Office of Planning and Zoning

DOUBLE FACED  
TRINITY ASSEMBLY OF GOD  
2122 W. JOPPA RD.  
LUTHERVILLE, MD 21093



## BALTIMORE COUNTY OFFICE OF PLANNING &amp; ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your Petition has been received this 5 day of Feb, 1982

Filing Fee \$ \_\_\_\_\_ Received: \_\_\_\_\_ Check  
\_\_\_\_\_ Cash  
\_\_\_\_\_ Other

Petitioner Trinity Assembly of God Submitted by William E. Hammond  
Petitioner's Attorney \_\_\_\_\_ Reviewed by William E. Hammond

\*This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

## PETITION MAPPING PROGRESS SHEET

| FUNCTION  | Wall Map   |    | Original |    | Duplicate |    | Tracing |    | 200 Sheet |    |
|---|--|----|----------|----|-----------|----|---------|----|-----------|----|
|   | date   | by | date     | by | date      | by | date    | by | date      | by |
| Descriptions checked and outline plotted on map |  |    |          |    |           |    |         |    |           |    |
| Petition number added to outline                |  |    |          |    |           |    |         |    |           |    |
| Denied  |  |    |          |    |           |    |         |    |           |    |
| Granted by<br>ZC, BA, CC, CA                    |  |    |          |    |           |    |         |    |           |    |
| Reviewed by: <u>WPH</u>                         | Revised Plans:<br>Change in outline or description _____ Yes<br>_____ No |    |          |    |           |    |         |    |           |    |
| Previous case: _____                            | Map # _____  |    |          |    |           |    |         |    |           |    |

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 8 Date of Posting 6/1/80  
Posted for: Petition for Variance  
Petitioner: Trinity Assembly of God  
Location of property: NE 1/4 Joppa Rd. & I-695  
Location of Signs: front of property (2122 W. Joppa Rd.)  
Remarks: \_\_\_\_\_  
Posted by: John Coleman Date of return: 6/5/80  
Signature \_\_\_\_\_

1 sign

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 8th Date of Posting Oct. 16, 1980  
Posted for: APPEAL  
Petitioner: TRINITY ASSEMBLY OF GOD  
Location of property: NE CORNER Joppa Rd. & I-695  
Location of Signs: FRONT 2122 W. Joppa Rd.  
Remarks: \_\_\_\_\_  
Posted by: Nicholas E. Roland Date of return: Oct. 31, 1980  
Signature \_\_\_\_\_  
Number of Signs: ONE

## PETITION FOR VARIANCE

LOCATION: Northeast corner of  
Joppa Road and I-695  
DATE & TIME: Tuesday, June 17,  
1980 at 1:30 P.M.  
PUBLIC HEARING: Room 106,  
County Office Building, 111 W.  
Chesapeake Avenue, Towson,  
Maryland

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petitioner for Variance to permit two 4-6' high non-illuminated signs in lieu of the permitted one 60 square feet in area of the permitted 60 square feet.

The Zoning Regulation to be accepted as follows:

Section 47B.11-1.1. Variance Board  
on church, school, or large property, not over 30 square feet in area all that parcel of land in the Eighth District of Baltimore County All that parcel of land (11.07 acres) lying on the southeast side of I-695 and bounded on the west side by Joppa Road. From a point at the point formed by the intersection of N.E. side of Joppa Road & I-695 East on radius 7614.44' 175.54' S 62 degrees 14' 50" E 228.72' S 17 degrees 12' 09" W 140.82' S 02 degrees 21' 50" E 250.90' N 75 degrees 22' 43" W 265.09' S 41 degrees 49' 59" W 1421.31' N 47 degrees 07' 59" W 158.14' N 34 degrees 49' 59" W 154.03' N 38 degrees 52' 49" W 79.38' to place of beginning.

Being the property of Trinity Assembly of God, as shown on p.d. plan filed with the Zoning Department.  
Hearing Date: Tuesday, June 17, 1980 at 1:30 P.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.  
By Order of:  
WILLIAM E. HAMMOND,  
Zoning Commissioner  
of Baltimore County  
May 29.

## CERTIFICATE OF PUBLICATION

TOWSON, MD May 22, 1980

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on ~~once a week~~ of one time ~~times a week~~ before the 17th day of June, 1980, the next publication appearing on the 29th day of May 1980.

THE JEFFERSONIAN,  
L. Frank Simpson  
Manager.

Cost of Advertisement, \$ \_\_\_\_\_

Reverend Earl D. Bald  
2122 West Joppa Road  
Lutherville, Maryland 21093

## BALTIMORE COUNTY OFFICE OF PLANNING &amp; ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

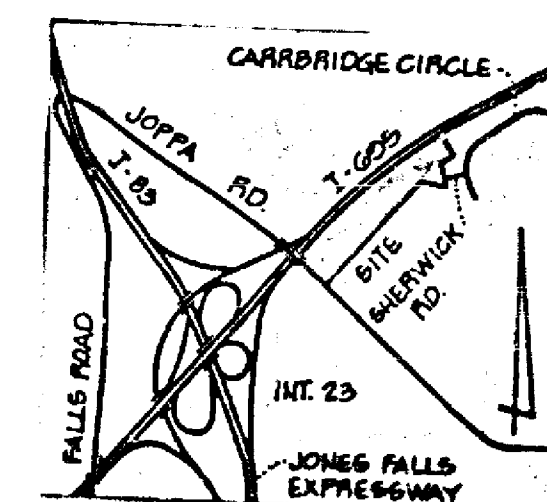
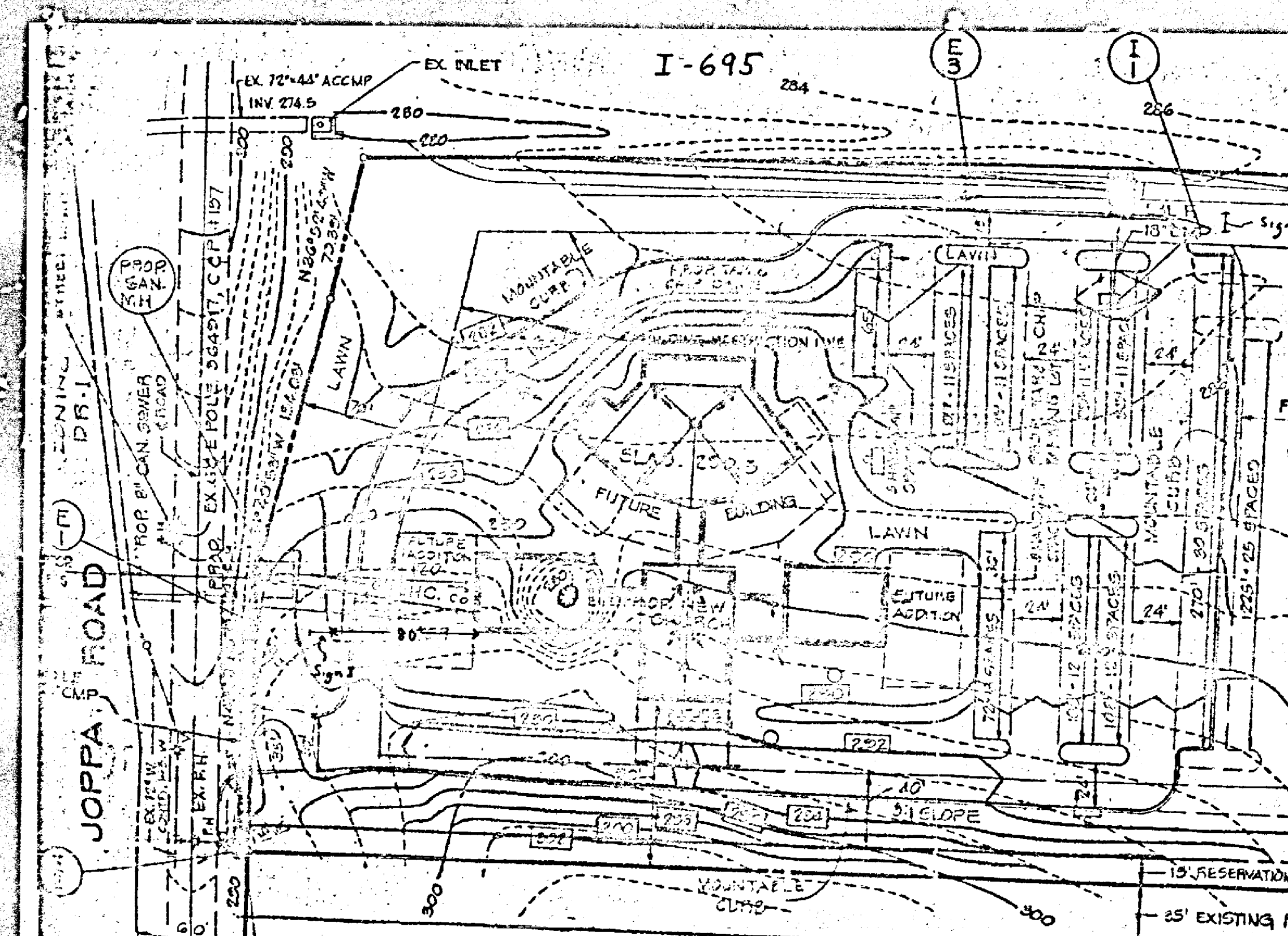
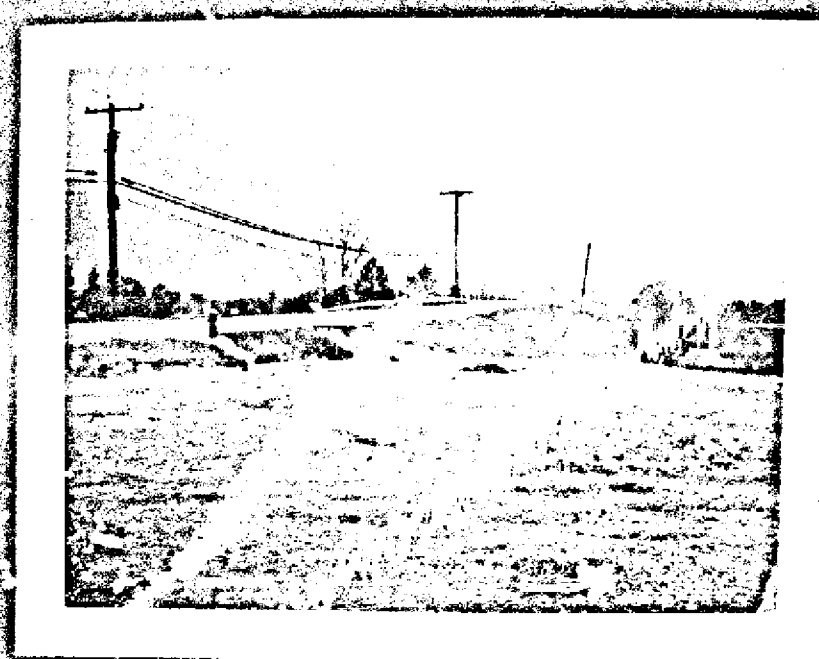
Your Petition has been received and accepted for filing this 8th day of May, 1980.

WILLIAM E. HAMMOND  
Zoning Commissioner

Petitioner Trinity Assembly of God

Petitioner's Attorney \_\_\_\_\_

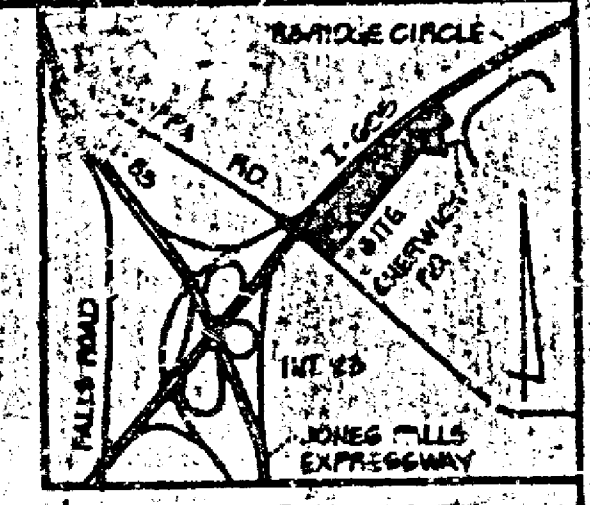
Reviewed by: Nicholas E. Roland  
Nicholas E. Roland  
Chairman, Zoning Plans  
Advisory Committee



VICINITY MAP

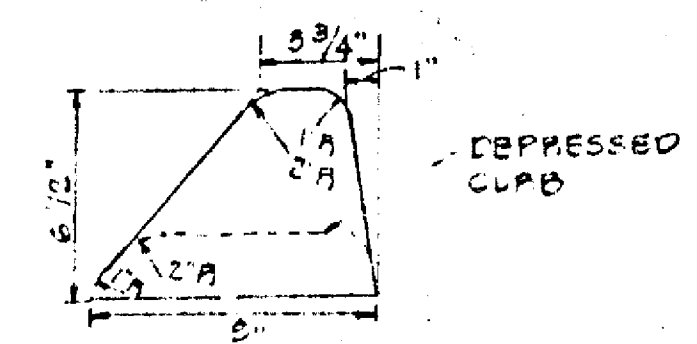
SITE PLAN FOR  
SIGN VARIANCE  
• TRINITY ASSEMBLY OF  
GOD CHURCH •  
ZONED D.R. 1  
8th ELECTION DISTRICT  
SCALE 1"=60'



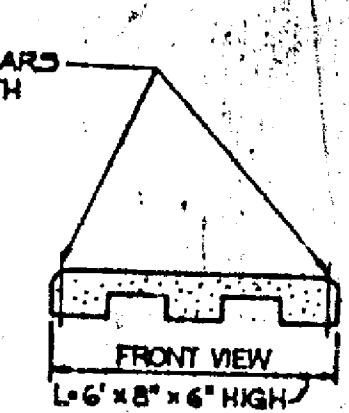


### GENERAL NOTES

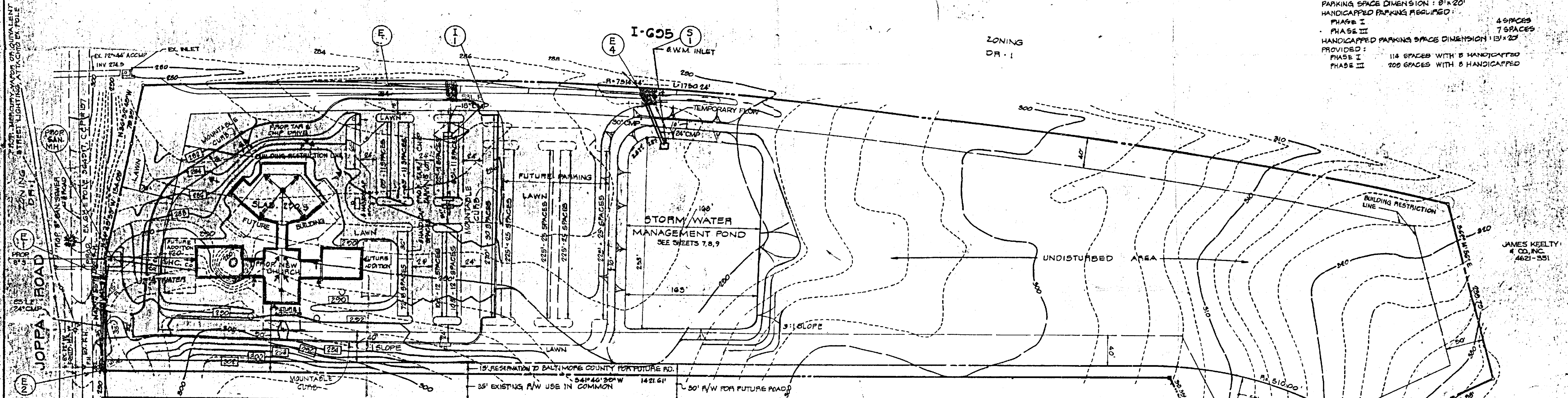
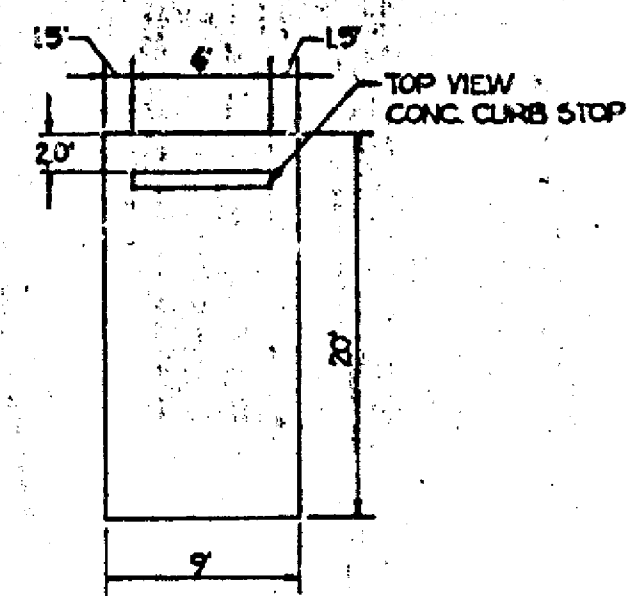
- TOTAL AREA OF SITE: 15.068 AC
- EXISTING USE: VACANT
- PROPOSED USE: CHURCH
- EXISTING ZONING: DR-1
- PARKING:
  - REQUIREMENT: 1 SPACE/6 SEATS
  - SPACES REQUIRED:
    - PHASE I CAPACITY 587 PERSONS + 98 SPACES
    - PHASE II CAPACITY 1212 PERSONS + 202 SPACES
  - SPACES PROVIDED:
    - PHASE I 48 SPACES
    - PHASE II 7 SPACES
  - HANDICAPPED PARKING SPACE DIMENSION: 13' x 20'
  - PROVIDED:
    - PHASE I 114 SPACES WITH 8 HANDICAPPED
    - PHASE II 200 SPACES WITH 8 HANDICAPPED



MOUNTABLE CURB  
SECT. ON  
BALTO. CO. PLATE R-20



TYPICAL PARKING SPACE WITH  
INSTALLATION OF CURB STOP

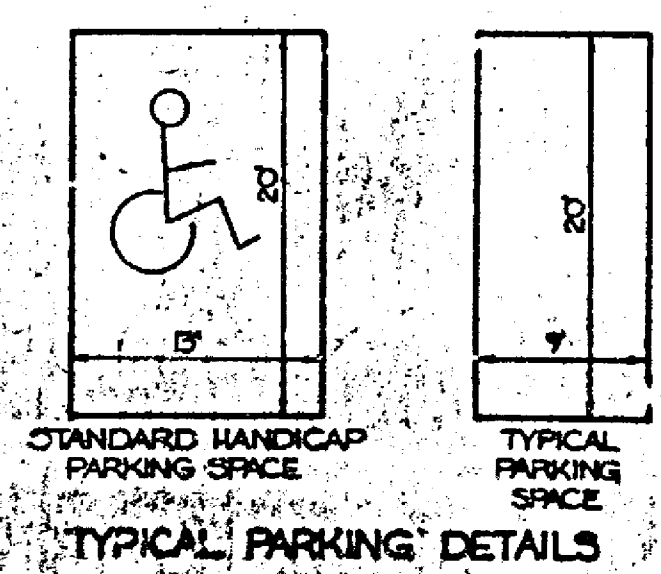


### SITE LIGHTING NOTES:

- LIGHTING FIXTURE TYPE/S, NOTES AND LOCATIONS ARE FURNISHED BY NYE & ASSOCIATES, INC., ARCHITECTS AND ENGINEERS; AND IN PART ARE AS FOLLOWS:
- ALL ELECTRICAL WIRING AND EQUIPMENT INSTALLATION SHALL COMPLY WITH ALL NATIONAL, STATE AND LOCAL CODES FOR PUBLIC BUILDINGS.
- CONTRACTOR: PLEASE NOTIFY BALTIMORE GAS & ELECTRIC CO. AND C&P TELEPHONE CO. AT LEAST THREE DAYS BEFORE STARTING WORK SHOWN ON THIS DRAWING BY CALLING: MGS UTILITY: 559-0100.
- THE ELECTRICAL CONTRACTOR SHALL REVIEW THE TOTAL POWER REQUIREMENTS WITH THE POWER COMPANY. IF SERVICE INSTALLATION RULES ARE NOT SATISFIED NOTIFY THE ARCHITECT OF REQUIREMENTS.
- OUTSIDE FLOODLIGHTING FIXTURES SHALL BE FOCUSED AFTER DARK THE FACADE LIGHTING AND SPIRE LIGHTING FIXTURES SHALL BE TIMER CONTROLLED SET FOR DUSK TO DAWN OPERATION.
- FACADE, WALKWAY AND PARKING LOT LIGHTING FIXTURES TO BE SET IN CONCRETE BASES BY ELECTRICAL CONTRACTOR.
- CONDUIT AND CABLE EMBEDDED UNDER DRIVEWAYS & PARKING AREAS SHALL BE INSTALLED IN A MANNER TO INSURE PROTECTION FROM DAMAGE DUE TO VEHICLE LOAD.

### LEGEND

- HOLOPHANE T16 SERIES RECESSED BIG EYE EMERGENCY LIGHTING UNIT W/NO. OF LENS HEADS AS INDICATED AND PROVISIONS FOR REMOTE C&T WIRING.
- LIGHTALARM (SERIES X5) EXIT SIGNS, W/ARROWS AS INDICATED.
- HOLOPHANE REMOTE LAMP HEAD - FOR OUTDOOR INSTALLATION 4400 SERIES.
- TELEPHONE OUTLET



TYPICAL PARKING DETAILS

OWNER & DEVELOPER  
TRUSTEES OF THE TRINITY ASSEMBLY OF GOD  
HARFORD ROAD & PARADISE DRIVE  
BALTIMORE, MD 21214

REV. ADDED MOUNTABLE CURB ON PERIMETER OF SITE PAVING. MODIFY ENTRANCE AS SHOWN. 3/27/78

AUG 2 1978  
BUEHLER ASSOCIATES, INC.

| SITE PLAN                               |                      |                       |                              |  |
|---|----------------------|-----------------------|------------------------------|--|
| PROJECT: TRINITY ASSEMBLY OF GOD CHURCH |                      |                       |                              |  |
| LOCATION: 8 TH ELECTION DISTRICT        |                      | BALTIMORE COUNTY, MD. |                              |  |
| DATE: JULY, 1978                        | DESIGN BY: J.M./W.N. | DRAWN BY: J.B./W.N.   | CHECKED BY: R.L.M.           |  |
| SCALE: 1" = 50'                         | JOB NO.: 11237       | DRAWING NO.: DR-1     |                              |  |
| bopender associates                     |                      |                       | engineers/surveyors/planners |  |



Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts that:

1. The Petitioner is the owner of a parcel of land consisting of fifteen acres, more or less, bounded on the west by Interstate 695 and on the south by Joppa Road.
2. The Petitioner is desirous of erecting two signs on the property:
  - a. A 4' x 6' sign, indicating the name of the church and the word "exit", in compliance with Section 413.1.e(3) of the Baltimore County Zoning Regulations in that it is directional and informational and does not exceed twenty-five square feet, is to be located at or near the northwest corner of said property (visible from Interstate 695).
  - b. A 3' x 12' sign, indicating the name of the church, in compliance with the purpose set forth in Section 413.1.b of said regulations but comprising thirty-six square feet in lieu of the allowed thirty square feet, is to be located at or near the driveway access to and from Joppa Road.
3. Both signs are to be double-faced and non-illuminated.
4. Strict compliance with said regulations would result in practical difficulty and unreasonable hardship upon the Petitioner; the variances requested would be in strict harmony with the spirit and intent of said regulations and would not adversely affect the health, safety, and general welfare of the community.

and, therefore,

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of August, 1980, that the herein Petition for Variances to allow the erection of two double-faced, non-illuminated signs in lieu of the allowed one sign, with a total square footage of sixty square feet in lieu of the permitted thirty square feet, pursuant to Section 307 of said regulations, should be and the same is GRANTED, from and after the date of this Order, subject, however, to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Very truly yours,  
Zoning Commissioner of Baltimore County

Charles E. Burman,  
Zoning Commissioner of Baltimore County

TRINITY ASSEMBLY OF GOD, : IN THE CIRCUIT COURT  
Appellant : FOR BALTIMORE COUNTY  
v. : AT LAW  
BALTIMORE COUNTY BOARD : Misc. No. 7662  
OF APPEALS, :  
Appellee : : : : :  
: : : : :

#### MEMORANDUM IN OPPOSITION TO PETITION FOR APPEAL

People's Counsel for Baltimore County, in opposition to the Petition on Appeal, states:

#### I. BACKGROUND

The Petitioner, a church located on West Joppa Road near the Baltimore Beltway, in a low density residential area (zoned D.R. 1), has sought a variance to permit it to erect two free-standing signs instead of the one (not over thirty square feet in area) permitted by Section 413.1b of the Baltimore County Zoning Regulations (hereinafter "BCZR"). The pastor of the church was the only witness, and he testified that the congregation often had visitors from Washington and other areas, who would benefit from an additional sign on the Beltway side of the church property.

Petitioner presented no evidence as to the character of the immediate neighborhood, nor was there any contention that the church was difficult to locate from local roads.

Petitioner similarly produced no evidence in reference to traffic safety or aesthetics.

The Board of Appeals, upon review of the meager record, visited the site and found that the additional sign would (because of its comparatively small size in reference to sight distances on the Beltway) be a distraction to motorists. It denied the variance and ordered the sign dismantled.

#### II. STANDARDS FOR VARIANCES - IN GENERAL AND FOR SIGNS

In McLean v. Soley, 270 Md. 208, 214, 313 A.2d 783 (1973), the Court of Appeals defined the standard of "practical difficulty or unreasonable hardship" under BCZR 307:

"1) Whether compliance with the strict letter of the restrictions would unreasonably prevent use of the property for a permitted purpose;

BALTIMORE COUNTY  
DEPARTMENT OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-0610

TED ZALESKI, JR.  
DIRECTOR

April 14, 1980

Mr. William E. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

I attended the 195 Zoning Advisory Committee Meeting, April 8, 1980, and am as follows:

Property Owner: Trinity Assembly of God  
Location: NEC Joppa Road & I-695  
Existing Zoning: D.R. 1  
Proposed Zoning: Variance to permit a sign for a church instead of the permitted 1 sign and to permit a total of 70 sq. ft. in lieu of the permitted 30 sq. ft.

Acres: 8.8  
District: 8th

The items checked below are applicable:

X A. All structures shall conform to the Baltimore County Building Code 1978, the and other applicable Codes.

X B. A building/ sign permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is not required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. In wood frame construction an exterior wall erected within 6' 0" of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3' 0" of lot line. A minimum 8" masonry firewall is required if construction is on the lot line.

F. Requested variance conflicts with the Baltimore County Building Code, Section/s

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required set of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed complies with the height/area requirements of Table 305 and the required construction classification of Table 211.

I. Comments -

NOTE: These comments reflect only on the information provided by the drawing submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired additional information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burman,  
Plans Review

CBZ:rrj

- 2 -

2) Whether substantial justice would be done consistent with interests of other property owners in the neighborhood; and

3) Whether the spirit of the ordinance will be observed and the public safety and welfare secured."

The McLean case involved sideyard setbacks. Its analysis must, therefore, be translated to apply to the matter of a sign variance. The meaning of the third part of the standard - the spirit and intent of the law and the securing of the public safety and welfare - must particularly be considered.

In Metromedia, Inc. v. City of San Diego, U.S. , 101 S. Ct. 2882, L.Ed. 2d (1981), the Supreme Court reviewed a billboard regulation. A threshold question was presented as to the relationship of the law to the advancement of a legitimate governmental interest. The Court said,

"Nor can there be substantial doubt that the twin goals that the ordinance seeks to further--traffic safety and the appearance of the city--are substantial governmental goals. It is far too late to contend otherwise with respect to either traffic safety, Railway Express Agency, Inc. v. New York, 336 U.S. 106, 69 S. Ct. 463, 93 L.Ed. 533 (1949), or aesthetics, see Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S. Ct. 2646, 57 L.Ed. 2d 631 (1978); Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L.Ed. 2d 797 (1973); Berman v. Parker, 348 U.S. 26, 33, 75 S. Ct. 98, 102, 99 L.Ed. 27 (1954)."

101 S. Ct., at 2892-93.

The leading Maryland case on sign zoning similarly concentrates on traffic safety, and, as more narrowly defined in terms of the character of the neighborhood, aesthetics. In City of Baltimore v. Mano Swartz, 268 Md. 79, 299 A.2d 823 (1973), the Court of Appeals defined the authority of a local government to enforce a zoning ordinance governing the location, size, and design of signs. There, the Court rejected a law devoted exclusively to aesthetics, but stated clearly that regulation of signs intended otherwise to promote public welfare would be sustained. For example, the "elimination of signs or pennants which distracted motorists" would be a valid objective. 268 Md., at 87.

## BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: April 8, 1980

Mr. William E. Hammond  
Zoning Commissioner  
Baltimore County Office Building  
1111 West Chesapeake Avenue  
Towson, Maryland 21204

Z.A.C. Meeting of: April 8, 1980

RE: Item No: 188, 190, 191, 192, 194, 195, 196  
Property Owner:  
Location:  
Present Zoning:  
Proposed Zoning:

District:  
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich, Assistant  
Department of Planning

WNP/bp

Otherwise stated,

"...The mere fact that the adoption of a zoning ordinance reflects a desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance. Thus, if the challenged restriction is reasonably related to promoting the general welfare of the community or any other legitimate police-power objective, the fact that aesthetic considerations are a significant factor in motivating its adoption cannot justify holding it unconstitutional."

268 Md., at 90 (footnote 2).

The Court in Mano Swartz also said that "...the police power may rightly be exercised to preserve an area which is generally regarded by the public to be pleasing to the eye..." 268 Md., at 71. This approach is particularly relevant where residential areas are affected. Accordingly, "[i]t is not irrational for those who must live in a community from day to day to plan their physical surroundings in such a way that unsightliness is minimized." 268 Md., at 90. (footnote 3)

Accordingly, the McLean variance standard, in the sign context, properly includes consideration of traffic safety and aesthetics.

#### III. SCOPE OF JUDICIAL REVIEW

The familiar limits to the scope of judicial review of administrative decisions apply here,

"This rule [if the issue is "fairly debatable," we will not substitute our judgment for that of the administrative body] will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion [that the Board of Appeals erred], but in enforcing the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be sustained."

McLean, supra, 270 Md., at 213-16.

The Metromedia case provides some additional advice on the narrow function of the courts in reviewing the decisions of local officials pertinent to the placement of signs. The plurality there said, as to traffic safety,

## MANDATE

### Court of Special Appeals of Maryland

No. 1250, September Term, 1982

People's Counsel for Baltimore County

v.

Trinity Assembly of God

May 2, 1983 - Opinion by Bishop, J.  
Dissenting Opinion by Moylan, J.  
Judgment affirmed. Costs to be paid by appellant.

June 1, 1983 - Mandate issued.

#### STATEMENT OF COSTS:

In Circuit Court: for Baltimore County

Record 30.00  
Stenographer's Costs None

In Court of Special Appeals:

Filing Record on Appeal 30.00  
Printing Brief for Appellant 403.50  
Reply Brief  
Portion of Record Extract - Appellant  
Printing Brief for Cross-Appellee

Printing Brief for Appellee 185.85  
Portion of Record Extract - Appellee  
Printing Brief for Cross-Appellant

#### STATE OF MARYLAND, Sci:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this First day of June

A.D. 1983

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

Rec'd 6/3/83  
12:40 PM

"We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable. As we said in a different context, Railway Express Agency, Inc. v. People of New York, 336 U.S. 106, 109, 69 S. Ct. 463, 465, 93 L. Ed. 533 (1949):

"We would be trespassing on one of the most intensely local and specialized of all municipal problems if we held that this regulation had no relation to the traffic problem of New York City. It is the judgment of the local authorities that it does have such a relation. And nothing has been advanced which shows that to be palpably false."

101 S. Ct. at 2923.

Separately, on the matter of aesthetics, Justice Rehnquist added,

"Nothing in my experience on the bench has led me to believe that a judge is in any better position than a city or county commission to make decisions in an area such as aesthetics. Therefore, little can be gained in the area of constitutional law, and much lost in the process of democratic decisionmaking, by allowing individual judges in city after city to second-guess such legislative or administrative determinations."

101 S. Ct., at 2925.



## IV. APPLICATION TO THE PRESENT CASE

## A. Use of the Property

There was no evidence that the sign variance was needed in order to use the property. The church was and is functioning, and there is no contention that its continued operation depends on having a second sign. In this connection, the variance is requested, in effect, for the "personal convenience" of the church and, as such, must be denied. See Carney v. City of Baltimore, 201 Md. 130, 93 A.2d 74 (1952).

## B. Substantial Justice in the Neighborhood

The church is situated in a residential neighborhood. The zoning in the immediate area is residential. The sole remaining feature of interest is that the property abuts the Baltimore Beltway.

In this connection, the Petitioner produced no evidence to support the suitability of an additional sign in the area or as it affected an interstate highway. In the absence of substantial reasons in support of a variance request, it must be denied. Carney, supra.

## C. Spirit and Intent of the Ordinance

In the present case, the matter of equity in the neighborhood combines with the matter of interpretation of the pertinent sign regulation.

Whether considered as to traffic safety or preservation of the character of the neighborhood, the Petitioner again failed to meet its burden of proof. Moreover, as to traffic, the County Board of Appeals made a specific finding that the freeway sign would be a distraction to motorists.\* It might also have added that to grant this variance would set a dangerous precedent for proliferation of signs along the Beltway unrelated to any public function.

## V. CONCLUSION

Under all of the above circumstances, the decision of the County Board of Appeals to deny the petition of Trinity Assembly of God for a sign variance not only was fairly debatable, but also was absolutely required. The Circuit Court is, therefore, respectfully requested to affirm.

\*The Circuit Court affirmed a somewhat similar Board of Appeals decision, founded on photographic evidence, in Ridgely Realty, Misc. Law No. 7305, opinion attached hereto.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE  
PETITION FOR VARIANCE : COUNTY BOARD OF APPEALS  
West side of York Road, 535' North of :  
Ridgely Road : OF  
8th District :  
Ridgely Realty Co., Inc., : BALTIMORE COUNTY  
Petitioner :  
No. 80-142-XA

## OPINION

This case comes before this Board on appeal from a decision by the Zoning Commissioner denying the requested Special Exception and accompanying Variance. The case was heard in its entirety, "De Novo", on June 12, 1980.

Petitioner's case first described the proposed sign and the area adjacent to it. Proposed sign is a standard "Billboard" type structure on property zoned BL on the west side of York Road, 535 ft. north of Ridgely Road. The variance requested to allow a two faced sign so it would be readable from both directions rather than having a blank side. Petitioner testified that all requirements of Section 502.1 have been satisfied and that said Special Exception and Variance should be granted.

Baltimore County representatives opposed the granting of this special exception for several reasons. There was much discussion as to the distance from the proposed sign to the nearest residences. No firm distance was established but it is clear to this Board that some residences do exist along this section of York Road. Mr. Norman Gerber, from the Baltimore County Planning Department, testified that the Planning Department opposes this request and feels it to be out of character with the general area and would be a bad impact on said area. He also noted that the property directly to the north on the west side of York Road was zoned MR, a highly restrictive zoning classification, and that directly across from this MR was DR 16 zoning.

After consideration of all the testimony and exhibits presented this case, the Board is of the opinion that the Zoning Commissioner's decision to deny this request was in fact correct. Several facts buttress this opinion.

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel

John W. Hession, III  
John W. Hession, III  
People's Counsel for Baltimore County  
Rm. 223, Court House  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 12th day of January, 1982, a copy of the foregoing Memorandum in Opposition to Petition for Appeal was mailed to Alan Garten, Esquire, Fedder & Garten, 36 S. Charles Street, Baltimore, Maryland 21201.

Peter Max Zimmerman  
Peter Max Zimmerman

Ridgely Realty Co., Inc.  
Case No. 80-142-XA

The sign as proposed would surely be visible from the DR 16 zoned area to the north. Also, a close examination of Petitioner's Exhibit 1B shows the sign to be directly atop a rise in York Road with autos disappearing directly past the sign down the hill toward Ridgely Road. The Board is of the opinion that this would in fact create a distraction to motorists at this point and would increase the traffic hazards as now exist along York Road. For these reasons, the Board is of the opinion that the Order of the Zoning Commissioner dated March 5, 1980, is correct and will so order.

## ORDER

For the reasons set forth in the foregoing Opinion, it is this 3rd day of September, 1980, by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner, dated March 5, 1980, be affirmed and the Special Exception request be DENIED. The requested Variance becomes moot upon the denial of the Special Exception and is therefore also DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Walter A. Reiter, Chairman

William T. Hackett  
William T. Hackett

Patricia Millhauser  
Patricia Millhauser

RECEIVED  
BALTIMORE COUNTY  
JUN 12 12 43 PM '82  
COUNTY BOARD  
OF APPEALS  
BY:

PETITION FOR SPECIAL EXCEPTION \* IN THE  
for double-face advertising structure \* CIRCUIT COURT  
and VARIANCE from Section 413.3a \*  
of the Baltimore County \*  
Zoning Regulations \* FOR  
W/S York Road 535' \* BALTIMORE COUNTY  
N. of Ridgely Road \* AT LAW  
8th District \* 12/355/7305  
Ridgely Realty Co., Inc. \*  
Petitioner \*  
Zoning File No. 80-142-XA \*

CLOSED

\*\*\*\*\*  
OPINION AND ORDER

The Petition of Ridgely Realty, Inc. for a Special Exception and variance to erect a double faced custom built sign of 500 square feet in lieu of a single faced unit, on the West side of York Road, 535 feet north of Ridgely Road was denied by the County Board of Appeals for Baltimore County on September 3, 1980.

Appellant contends it met all the requirements of Section 502.1 of the Baltimore County Zoning Regulations and the action of the Board was arbitrary, capricious and against the weight of the evidence and should be reversed on appeal.

The review by this Court of the action of the County Board of Appeals is narrow and if the Court finds substantial evidence to support the decision, even if debatable, it must affirm.

The opinion of the Board in its finding of a traffic hazard based on Petitioner's Exhibit 1B is not supported by any testimony of a traffic expert. The photograph, however, could be evidence for the Board to reach its decision. City of Balto. v. Mano Swartz, 268 Md. 79 at p. 87.

APMG/11b  
6/2/82

TRINITY ASSEMBLY OF GOD \* IN THE CIRCUIT COURT  
Appellant \* FOR BALTIMORE COUNTY  
\*  
\* FOR BALTIMORE COUNTY  
v. \* AT LAW  
BALTIMORE COUNTY BOARD OF APPEALS \* Misc. No. 7662  
Appellee \*

## MOTION FOR POSTPONEMENT

Mr. Clerk:

Please postpone the above-captioned case that is scheduled for a hearing on July 9, 1982 at 9:30 A.M. for the reasons that I am already scheduled to appear in the District Court of Maryland for Baltimore City in the cases of American Bail Bond vs. Hilda Johnson et al Case No. 19069-81 and Action T.V. Rentals, Inc. vs. Brayboy Case No. 35385-81.

Alan F.M. Garten, Esquire  
Fedder and Garten P.A.  
2300 Charles Center South  
36 South Charles Street  
Baltimore, Maryland 21201  
(301) 539-2800

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 1982, a copy of the foregoing Motion for Postponement was mailed to Peter Max Zimmerman at the People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland

Alan F.M. Garten, Esquire

RECEIVED  
BALTIMORE COUNTY  
JUN 3 11 51 AM '82  
COUNTY BOARD  
OF APPEALS  
BY:

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201

Most importantly, however, Section 502.1a must be satisfied by Petitioner, sic:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955.]  
a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]..."

There was substantial evidence, at least debatable, before the Board in the testimony of Norman Gerber, Director of the Office of Planning and Zoning of Baltimore County, that the proposed sign is out of character with the surrounding area thus generally being adverse to the general welfare of the community.

Therefore, it is this 2nd day of September, 1981, by the Circuit Court for Baltimore County, ORDERED, that the order of the County Board of Appeals of Baltimore County denying the Special Exception and Variance is affirmed.

Austin W. Brizewich  
AUSTIN W. BRIZEWICH, Judge

Copies sent to:

Ira C. Cooke, Esquire  
John W. Hession, III, Esquire  
Peter Max Zimmerman, Esquire

TRINITY ASSEMBLY OF GOD \* IN THE CIRCUIT COURT  
Appellant \* FOR BALTIMORE COUNTY  
\*  
\* AT LAW  
v. \*  
BALTIMORE COUNTY BOARD OF APPEALS \* Misc. No. 7662  
Appellee \*

## MEMORANDUM

Trinity Assembly of God, by its attorney, S. Ronald Ellison, Alan F.M. Garten, and Fedder and Garten P.A., in support of its Petition on Appeal states:

## FACTS

Trinity Assembly of God (hereinafter referred to as "Trinity Assembly") is a duly incorporated church under the laws of the State of Maryland. Trinity Assembly is the owner of a parcel of land in Baltimore County consisting of fifteen acres bounded on the West by Interstate 695 (Baltimore Beltway) and on the South by Joppa Road. Approximately 18,000 square feet of this acreage is improved by the church building. Trinity Assembly is now in the process of planning an additional 6,000 square feet of improvements which will consist of an increased nave, a future education wing, a narthex complex, and an enlarged nursery. Between 800 to 1,000 persons attend religious services at Trinity Assembly each week and several hundred other persons use the Church's facilities throughout the month for various other functions. If the future additions become a realization an additional 400 to 500 persons will use the facility. Ninety percent of those persons who commute to Trinity Assembly travel along the Baltimore Beltway.

Two other nearby churches border the Baltimore Beltway. As a result of their close proximity, many visitors of the church have had trouble differentiating Trinity Assembly from these other churches. The other nearby churches bordering the beltway are identified by signs constructed alongside the beltway.

Since Trinity Assembly borders on both the Beltway and Joppa Road, and these roads are not in sight of one another, the church petitioned the Zoning Commissioner of Baltimore County for a variance to erect two double-face, non-illuminated signs. The

FEDDER AND GARTEN  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW  
BALTIMORE, MARYLAND 21201







